

- 1. Introduction**
 - 1.1. This is a Hosted Service Agreement (“**Agreement**”) between Xperior (“**we**”, “**us**” or “**our**”) and the organisation who uses the System to provide services to the properties, the details of which are set out in the Order Confirmation (“**you**” or “**your**”). The Agreement defines the rights and responsibilities of each of you and us with respect to the hosting access, use and support of the System.
 - 1.2. Unless the context otherwise requires, all capitalised terms used herein are defined in Clause 16.
- 2. Term**
 - 2.1. This Agreement commences on the date of you accepting this Agreement either electronically or via paper signature, and will continue for the Term (unless terminated earlier in accordance with clause 11).
- 3. Access and Use by You**
 - 3.1. Provided you pay to us the required Fees as and when they fall due, we grant you a non-exclusive, non-transferable licence, during the term of this Agreement to:
 - (a) access the System and use the functionality available on the System from within the Territory in conjunction with your management of the properties or provision of services to persons, companies or properties; and
 - (b) permit (authorise) a Service Partner or Tenant (each an “**Authorised User**”) to access and use the System to conduct transactions in the Territory.
 - 3.2. The System (and software made available through the System) will only be made available to you (and Authorised Users) as a hosted service.
- 4. Authorised Users**
 - 4.1. You may permit an Authorised User to access and use the System subject to the relevant terms and conditions (“**Terms**”), without amendment. Nothing in the Terms operates to limit the rights or obligations of each of you and us under this Agreement.
 - 4.2. You acknowledge that we have no control over what you, any Authorised User or other third party does with or on the System, and the transactions that are made using the System. We are not a party to any transaction you or an Authorised User enter into with each other or between themselves using the System. Accordingly (and with the exception of liability that cannot be excluded), we accept no liability for any claims or demands by any Authorised User relating to this Agreement, the Terms, the System, transactions made using the System or the User Data.
 - 4.3. Where you permit an Authorised User to access or use the System under clause 4.1 above, then you will:
 - (a) ensure that the Authorised User complies with the relevant Terms; and
 - (b) indemnify us against any losses, liabilities, damages or penalties (inclusive of reasonable legal fees) suffered or incurred by us as a result of any:
 - (i) breach of the Terms by an Authorised User (or its employees, contractors, agents or officers); or
 - (ii) claim by an Authorised User relating in any way to this Agreement, the Terms, the System, the transactions made using the System or the User Data.
 - 4.4. You will promptly notify us of any breach of the Terms by an Authorised User that you become aware, and do all that is reasonably necessary (at your cost) to halt any such breach. You will also provide us with reasonable assistance were we elect (in our discretion) to take legal action against an Authorised User or other third party to protect or enforce our rights under this Agreement or the relevant Terms.

- 5. User Data**
- 5.1. The System may offer features that allow you and Authorised Users to upload data or information (of any kind) to the System (“User Data”).
- 5.2. We will use reasonable commercial efforts to retain User Data on the System for the term of this Agreement and for a subsequent period of 12 months. We make no other representations, and give no other warranties and have no other obligations, in relation to the retention, recovery, or recoverability of User Data.
- 5.3. We will provide you with access tools (via the functionality of the System) for you to download specific sets of User Data at any time during the term of this Agreement.
- 5.4. You may request that we provide you a full extract of all User Data in a flat file format for a fee of \$250 per extract. You may request this after the termination or expiry of this Agreement, provided all outstanding Fees have been paid in full and we still hold a copy of such User Data.
- 5.5. We will host the User Data from locations specified in the Order Confirmation.
- 6. System Support Services**
- 6.1. We will provide the support services to you as outlined in Schedule 1 (“Support Services Terms”), using all reasonable efforts to do so in accordance with the service levels set out therein.
- 6.2. We may use our related companies or subcontractors to provide the Support Services.
- 6.3. We are not required to provide any Support Services (or any other services) to an Authorised User or any other third party.
- 7. Intellectual Property in the System**
- 7.1. We retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to the System (and related documentation) and any modifications or derivatives thereof. Your sole rights to the System are set out at clause 3.1.
- 7.2. You agree to comply with the licence terms applicable to the open source components which are embedded in the System.
- 7.3. You may include on each portal to the System an Xperior logo (to be supplied by us) provided this includes an embedded link to our website. We may revoke this right at any time on notice to you.
- 8. Fees and Payment Terms**
- 8.1. Our fees for the use of the System are set out and calculated in accordance with the fees specified in the Order Confirmation (“Fees”). The Fees specified as being a fixed amount per month will be due and payable by you at the end of each month. Where a payment schedule is specified, you will pay the applicable instalment of the Fees by the corresponding date specified in the payment schedule. All other Fees are payable by you upon completion by us of the relevant services or provision of the relevant products. You will make all payments without deduction or set off within thirty (30) days from receipt of our invoice, and also pay to us any applicable GST and any other applicable taxes assessed on this Agreement, or the transactions the subject of this Agreement, when making such payment.
- 8.2. Should you fail to pay the Fees within forty five (45) days of the due date, then we may suspend your (and Authorised Users) rights to access and use the System until such time as all overdue Fees are paid in full.
- 9. System Availability**
- 9.1. You agree to us modifying the System (including its functionality, data formats and other matters) and the Support Services from time to time, so long as any such modifications do not substantially impact upon your ability to continue to use the System in the manner contemplated by this Agreement.
- 9.2. We may suspend access to and use of the whole or any part of the System, where we have a reasonable basis to believe that:
- a. There is a detected or suspected denial of service attack or other attack on the System (or other event that we determine, in our reasonable discretion, may create a risk to the System, or to you, an Authorised User or other third party, if the System was not suspended);

- b. You are in breach of) days of the start of the relevant subscription month;
- c. An Authorised User is in breach of the relevant Terms (in this case the suspension will be limited to that Authorised User only); or
- d. Access to or use of the System is prohibited by law in a relevant jurisdiction, or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons

(collectively, “**System Suspension**”).

9.3. We will use reasonable efforts to ensure that the period of suspension is limited to the extent that is required to specifically address such issue or non-compliance and only for such period as the issue or non-compliance persists.

9.4. We warrant that the System will be available for your access and use for 99% (maximum 2 hours outage in each month) of the time during each calendar month. This warranty excludes unavailability due to:

- (a) System Suspension;
- (b) scheduled maintenance requirements, which we will use reasonable efforts to notify you in advance;
- (c) faults or outages in equipment, software or systems provided by you (or provided by a third party on behalf of you);
- (d) your acts or omissions, or that of an Authorised User or third party in breach of this Agreement or the relevant Terms; or
- (e) Force Majeure,

and you acknowledge that we shall have no liability to you, Authorised Users or any other third party for any losses, liabilities or damages arising from any of these events.

9.5. If we fail to meet the warranty in clause 9.4 above and you are not in breach of this Agreement, then you will, as your sole and exclusive remedy for a breach of that warranty, be eligible for a credit of 5% of the Fees in respect of the relevant calendar month for each whole hour of System unavailability. The maximum total credit for the relevant month, shall not exceed 25% of the Fees for that month. Credits will not be carried forward to future billing periods.

9.6. Except as expressly stated in this clause 9 and the Support Services Terms, we provide the System and the Support Services on an “as is” and “as available” basis. In particular, we disclaim all other warranties and representations of any kind, whether express or implied, with respect to this Agreement, the System or the Support Services including, without limitation, that the System is error-free or that the System will be continuously available, or any implied warranties of merchantability and fitness for a particular purpose, in each case to the extent permitted by law. Our liability in relation to any warranty or condition implied into this Agreement by law which cannot be excluded, is limited to one or more of the following at our option:

- (a) in the case of goods, the replacement or repair of the goods or payment of the cost of having the goods replaced; or
- (b) in the case of services, the supply of the services again or payment of the cost of having the services supplied again

10. Force Majeure

10.1. Neither you nor we are liable for failure to perform or delay in performing any obligation (excluding payment) under these Terms if the failure or delay is caused by any circumstances beyond your or our reasonable control including third party telecommunication failures. If any such failure or delay continues for a period of 14 days, Xperior may terminate this Agreement.

11. Termination

11.1. You may terminate this Agreement where we breach this Agreement and fail to remedy that breach within 10 days after receiving notice from you.

- 11.2. We may terminate this Agreement immediately on notice to you where you:
- (a) breach this Agreement and fail to remedy that breach within 10 days after receiving written notice from us;
 - (b) in our reasonable opinion, are, or likely to become, insolvent; or
 - (c) you have failed to pay the Fees within ninety (90) days of the start of the relevant subscription month
- 11.3. On expiry or termination of this Agreement you will:
- (a) pay all amounts owed to us until the date of termination or expiry; and
 - (b) you acknowledge that your (and your Authorised Users) rights to access and use the System will cease;
- 11.4. Termination or expiry of this Agreement will not affect any accrued rights or remedies either party may have.
- 11.5. Any provision of this Agreement which by its nature survives termination or expiry continue in full force and effect, notwithstanding such termination or expiry.

12. Limitation of Liability

- 12.1. You are solely responsible for ensuring that the System and the requested Support Services:
- (a) are suitable and adequate for your requirements; and
 - (b) comply with all laws and regulations applicable to you and your business
- 12.2. Except for liability arising under or in relation to clauses 4.3, 12.4, 13 or 14.3 of this Agreement:
- (a) each party shall not be liable for any indirect or consequential loss, lost data or lost profits, or costs of procuring substitute goods, software or services, however arising, even if it has been advised of the possibility of such damages; and
 - (b) the liability of each of you and us for damages in relation to this Agreement whether in contract, tort (including without limitation negligence), statute or otherwise, for all claims in the aggregate shall be limited to the Fees actually paid to us in the three (3) months immediately preceding the act or omission most closely linked with the most recent claim
- 12.3. You acknowledge that the System is not intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the System could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, we specifically disclaim any express or implied warranty of fitness for High Risk Activities and will not be liable for any claims, loss or damage arising from the use of the System in such circumstances.
- 12.4. You indemnify us against any amount we are finally ordered to pay to a third party by a Court of competent jurisdiction (or settlement agreed by you) which arises from a claim alleging that our use of the any material or information provided by you or an Authorised User to us under this Agreement or the relevant Terms (inclusive of the User Data) infringes the Intellectual Property Rights or other rights of that third party.

13. Confidentiality

- 13.1. Both you and us must keep confidential, all information of or relating to the other party, or its products (which in our case includes the System), methods, processes, techniques, systems, customers and business affairs, which becomes available to the first party or its personnel (the “**Confidential Information**”). Confidential Information:
- (a) of us, includes the System and related documentation (and any methods, processes, systems, formulae, formats or ideas included or described in, or arising from, it) and terms and conditions of this Agreement (inclusive of the Fees); and
 - (b) excludes information which is or becomes readily available in the public domain without breach of this Agreement or an obligation of confidence.
- 13.2. Each party must keep secret and may only use Confidential Information of the other solely for its internal business purposes connected with the purpose of this Agreement and (except as otherwise required by law) will protect the Confidential Information of the other from disclosure not authorised by the other.
- 13.3. The receiving party must on demand by the disclosing party return (and must cause recipient's personnel to return) to disclosing party all copies (including partial copies) of the disclosing party's Confidential Information, except that the recipient may retain, on a confidential basis, one copy of discloser's Confidential Information for record keeping and quality assurance purposes.
- 13.4. Neither party may make statements to the media, or public statements generally, relating to the other party or to such other party's Confidential Information. However, either party may make such statements about the general nature of the commercial relationship between the parties.

14. General

- 14.1. All notices hereunder shall be delivered to the other party identified in Item 5 of Schedule 1 either personally, via certified mail, facsimile or overnight courier. If delivered personally, notice shall be deemed effective when delivered. If delivered via facsimile, notice shall be deemed effective upon electronic confirmation, and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.
- 14.2. Nothing in this Agreement will deem you, or any person engaged by you, as our employee, servant or agent.
- 14.3. You will comply with all laws and restrictions and regulations of any relevant government or regulatory body in the access to and use of the System.
- 14.4. The governing law and venue for resolution of disputes shall be Victoria, Australia.
- 14.5. This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it. This Agreement may be amended only by a written document executed by a duly authorised representative of each of the parties.
- 14.6. No party is liable for any failure or delay in performing its obligations under this Agreement to the extent due to anything beyond that party's reasonable control, including faults in, or the non- availability power and communications infrastructure necessary for you or an Authorised User to access or use the System. This clause does not apply to any obligation of you to pay the Fees.
- 14.7. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right under this Agreement shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

15. Insurance

- 15.1. Xperior must take out and maintain during the Term a public risk and product liability insurance policy in which the amount payable arising out of any one single accident claim or event is not less than \$20 million.
- 15.2. Xperior must deliver the insurance policy(ies) and (an) original certificates of currency of the insurance(s) to the Owner or Manager before commencing the Services, and provide reasonable evidence to the Owner (upon request) of the currency of the insurance policies from time to time.

16. Definitions

“Properties” means the locations specified in the Order Confirmation.

“Content” means all information of whatever kind (including blogs, articles, comments, photos, logos, videos, audio, images, advertisements etc.) published, stored or sent on or in connection with the System.

“Force Majeure” means any cause beyond a party’s reasonable control (including third party communication failures).

“Xperior” means Xperior Group Pty Ltd (ACN 160 608 195).

“Intellectual Property” means any confidential information, copyright, trademarks, service marks, designs, patents, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields.

“Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the word in relation to any Intellectual Property.

“Order Confirmation” means the Order Confirmation signed by you.

“Service Partner” means an employee, sub-contractor, supplier or other related party that you have authorised to use the administration features of the System.

“Support Services” those support services set out in Schedule 1.

“Support Services Terms” means the terms set out in Schedule 1.

“System” means the building management and communications system operated by Xperior.

“System Suspension” has the meaning given in clause 9.2.

“Tenant” means a person or organisation that you have authorised to use the self-service and online store features of the System.

“Term” means the term of this Agreement set out in the Order Confirmation.

“Terms” means the terms and conditions set out in this document.

“Territory” means Australia, unless otherwise specified.

“User” means any person who access or uses the System.

“User Data” has the meaning given in clause 5.

1. Support Services
Level 1 | Telephone (Help Desk)

Must supply to Authorised Users a Telephone or Email Help Desk, which will respond to queries during standard business working hours (“**Support Hours**”). The Help Desk will register issues and route issues that cannot be immediately resolved to Level 2 System Support.

Level 2 | System Support

We must supply to you the following Support Services from 9:00am – 5:00pm, Monday to Friday in the Melbourne, Australia time zone.

Details below are in relation to defects in our provided components of the System and not:

- (a) portal availability, which is covered in clause 9 of this Agreement;
- (b) issues in relation to loss of availability of your provided systems;
- (c) issues in relation to incorrect use of content management functions provided via the System (such as, but not limited to, incorrect referencing of pages resulting in page not found errors, broken links, code errors in extended functionality developed by you).

2. Response to and Restoration of Defects in the System

Severity Level	Measure	Service Level
1	Response Time	We must respond to you within 4 working hours (during Support Hours) of you notifying us of the defect. When responding, we must also advise you of what actions we intend to carry out to resolve the defect.
1	Restoration	Restore the defect within a further 4 working hours (during Support Hours) of our Response Time to you. This may be achieved by: (a) fixing the root cause; or (b) a temporary work around
2	Response Time	We must respond to you within 24 working hours (during Support Hours) of you notifying us of the Severity 2 defect. When responding, we must advise you as to what actions we intend to take to resolve the defect.
2	Restoration	Restore the defect within a further 24 working hours (during Support Hours) of our Response to you. This may be achieved by: (c) fixing the root cause of the defect; or (d) a temporary work around

3. Severity Level Definitions

Fault Priority	Description
Severity Level 1	Any one of the following items are true: <ul style="list-style-type: none"> System is available but with material impairment to the operation of major functions including negative impacts on the financial operations of your business with regard revenue generation, billing or collection System available to you, but one or more major functions not available
Severity Level 2	Any one of the following items is true: <ul style="list-style-type: none"> Loss of this functionality has minor impact on you A recurring or chronic minor defect An acceptable work around may exist but a permanent fix cannot be deferred beyond our specified fix time

You have the right (which you must exercise in good faith) to:

- (a) determine what Severity Level a defect falls in; and
- (b) reclassify a defect from one Severity Level to a different Severity Level

You will ensure that you have appropriately qualified staff skilled to reasonably make and update these determinations.

4. Credits

- (a) If we fail to meet our service level obligations in section 2 of this Schedule, you will (subject to the remaining provisions of this section 4) and as your sole and exclusive remedy with respect to such failure, be eligible for a credit of 5% of the Fees in respect of the relevant calendar month for each failure to meet a Response or Restoration Time.
- (b) You are not entitled to a credit if: (a) during the relevant calendar month you are in breach of this Agreement; (b) the defect was caused by (or contributed to by): (i) misuse of the System by you or an Authorised User; or (ii) the acts or omissions of you or an Authorised User in breach of this Agreement or the relevant Terms.
- (c) To receive a credit, you must: (a) contact our account representative in writing within thirty (30) days following the failure; and (b) show by its written records that your use of the System was adversely affected in some material way as a result of the defect.
- (d) Notwithstanding anything in this Schedule 1 to the contrary, the maximum total credit for the relevant month shall not exceed 25% of the Fees for that month. Credits will not be carried forward to future billing periods.

5. Updates

We will update the System and associated functionality in several forms and endeavour to perform these tasks at times that cause the least amount of impact to the extent reasonably practical to do so:

- (a) **Emergency Patch Release**
Performed on very short notice to rectify a critical issue in the System. We will, where feasible, provide details of the changes and advise when the changes will be implemented and any associated down time.
- (b) **Patch Release**
Performed on short to medium notice to rectify issues prior to a scheduled System release. We will provide details of the changes and advice as to when the changes will be implemented and any associated down time. There will be an opportunity for you to request a deferral of a planned System release if we have advised in writing of significant business impact that may be caused and if we agree to re-schedule the System release.
- (c) **System Release**
Performed as part of Scheduled Maintenance in a given month. We will provide details of the changes and advice as to when the changes will be implemented and any associated down time. There will be an opportunity for you to request a deferral of a planned System release if we advise in writing of significant business impact that may be caused and if we agree to re-schedule the System release.

Updates shall not include any releases, enhancements, functionality or products which we license separately or charge for separately