

Partner Program Terms and Conditions

Last updated: May 4, 2017 *[updates in Section 1, 2, 4 and 7]*

As a condition of your participation in the HomeAway Partner Program, you (the "Partner") agree to the following Terms and Conditions (together with the Schedule, the "Agreement") with HomeAway.com, Inc., a Delaware corporation ("HomeAway"), its subsidiaries, affiliates, successors or assigns. This Agreement is effective as of the date the Partner submits or signs the corresponding Schedule, and HomeAway accepts the Partner into the Partner Program (the "Effective Date").

Recitals

- A. HomeAway operates websites (the "Sites") dedicated to providing services to travelers, vacation property owners and managers worldwide. Partner offers ancillary services to vacation rental travelers, property owners or managers which it would like to promote to HomeAway's customers and/or users.
- B. Partner wishes to compensate HomeAway for revenue or leads received from the Marketing Services (the "Marketing Consideration").
- C. Partner and HomeAway enter into this Agreement pursuant to the terms and conditions set forth herein.

General Definitions

- A. "Gross Revenue" is the total amount of all sales, exclusive of sales tax and VAT, collected by the Partner from each Sale.
- B. "HomeAway Referral" is any individual or entity that is referred or directed by HomeAway to the Partner product(s) and/or service(s) via the Marketing Services.
- C. "Net Revenue" is Gross Revenue less all third-party direct costs incurred by Partner to deliver the Partner product(s) and/or service(s) as further defined in the Schedule. Examples include credit card fees, payments and commissions due to external vendors
- D. "Sale" is a successful purchase of a Partner product or service by a HomeAway Referral either during (i) the Term of this Agreement or (ii) the Initial Term, whichever is longer.

Marketing Consideration Definitions

- A. "Cost-Per-Referral" or "CPR" is the fee paid to HomeAway by Partner for the first Sale.
- B. "Cost-Per-Sale" or "CPS" is the fee paid to HomeAway by Partner for each Sale.
- C. "Revenue Share" is the percentage of either Partner's Gross Revenue or Net Revenue payable to HomeAway.

Agreement

1. Marketing Services. Partner may provide HomeAway with an offer for its product(s) and/or

service(s) with the goal of recruiting and retaining potential customers as further defined in the Schedule ("Marketing Services"). Specific offers and details can be updated by the Partner from time to time. HomeAway shall market the Partner product(s) and or service(s) through the Marketing Services. Partner is solely responsible for the content and execution of its product(s) and/or service(s), including compliance with any consumer protection laws.

2. Use of HomeAway Names, Logos or other HomeAway IP. Upon request, Partner shall provide a text and logo banner that will be featured in the Marketing Services. Partner, however, shall not use HomeAway's names, marks or logos, including on its website, marketing campaign, media outreach or press releases, without prior written approval from HomeAway, which shall not be unreasonably withheld. If provided with a HomeAway logo or partner badge, HomeAway grants to Partner a non-exclusive, limited, revocable, non-transferable license to use its Marks solely for the purpose of carrying out its obligations under this Agreement (in accordance with usage guidelines provided by HomeAway).

3. **Partnership Marketing Consideration.** In exchange for the Marketing Services, HomeAway shall receive the Marketing Consideration. Marketing Consideration is only due for business generated by Partner as a result of the Marketing Services. Partner shall remit Marketing Consideration within thirty (30) days following the last day of each calendar month for the prior month's activity. Any Marketing Consideration shall be accompanied by a statement providing reasonable details to justify the amounts.

4. **Intellectual Property Rights.**

A. Each party acknowledges that nothing contained in this Agreement transfers to the other party any right, title or proprietary interest (including without limitation any intellectual property rights), in any part of a party's intellectual property (including without limitation any trademarks, service marks, trade names, copyrights, patents, or logos (collectively "Marks")). Except as provided herein, no licenses of either party's Marks or any other intellectual property are granted or implied under this Agreement. The Partner represents and warrants that its Marks do not and will not infringe on the intellectual property rights of any third party. The Partner is committed in each case to indemnify and hold harmless HomeAway from any adverse claim, as of now committing to compensation for any related damages and expenses.

B. Partner hereby grants to HomeAway a non-exclusive, limited, revocable, worldwide, royalty-free, fully paid up, non-transferable license to use its Marks solely for the purpose of carrying out its obligations under this Agreement (in accordance with usage guidelines provided by Partner) including without limitation the Marketing Services.

5. **Term and Termination.** This Agreement shall commence on the Effective Date and shall continue for a period one (1) year (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for successive one (1)-year periods.

A. **Termination for Cause.** This Agreement may be terminated at any time upon the occurrence of any one of the following events: (i) if either of the parties defaults on any material obligation under this Agreement and such default is not cured within thirty (30) days following notice from the other party; or (ii) if a party files a petition for bankruptcy, is insolvent, makes an assignment for the benefit of creditors or if a trustee or receiver is appointed for a party, and such proceeding remains un-dismissed for a period of sixty (60) days.

B. **Termination for Convenience.** Either party may terminate this Agreement at any time,

without penalty, by providing the other party with thirty (30) days advance written notice. During this notice period all remaining terms and conditions of this Agreement shall remain in full force and effect. Upon termination, Partner shall remit to HomeAway any Marketing Consideration which remains outstanding.

C. **Survival.** The following sections shall survive termination of this Agreement: 4(A), 5(c), 6, 7, 8, 9 and 10.

6. Liability.

A. **No Consequential Damages.** TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR BREACHES OF SECTION 7 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 8, AND MATTERS INVOLVING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR DATA), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

B. **Limited Liability.** EXCEPT FOR BREACHES OF SECTION 4 (INTELLECTUAL PROPERTY RIGHTS) SECTION 7 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 8, BREACH OF DATA PROTECTION AND MATTERS INVOLVING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE LIABILITY OF EITHER PARTY FOR DAMAGES OR ALLEGED DAMAGES HEREUNDER, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IS LIMITED TO, AND WILL NOT EXCEED, THE MARKETING CONSIDERATION PAID UNDER THIS AGREEMENT.

7. **Confidentiality.** During this Agreement, each party may disclose to the other information that is confidential and proprietary to the disclosing party ("Confidential Information"). Confidential Information includes, but is not limited to, business plans, marketing plans, financial statements, competitive analysis, market research, service and/or product development plans, inventions, machinery, prices, apparatus, costs, discounts, process information, technical information, customer lists, sales records, computer programs, designs, and models, and the terms of this Agreement communicated orally, in writing, or electronically. Each party agrees that it will maintain the Confidential Information of the other party in confidence and shall use such information only for the purposes of executing its obligations under this Agreement. Confidential Information may be disclosed by a receiving party exclusively to specific employees within its organization who have a need to know such information for the purposes of executing the party's obligations under this Agreement. Upon expiration or termination of this Agreement or, sooner if demanded by a party, the receiving party shall return to the disclosing party any of the disclosing party's Confidential Information including all copies thereof. The obligations of each party in this Section 7 shall continue for a period of one (1) year following the expiration or termination of this Agreement. The obligations of this Section 7 shall not apply to any Confidential Information that (i) is or becomes public through no act of the receiving party; (ii) is rightfully received from a third party without obligations of confidentiality; or (iii) is independently developed by a receiving party without reference to the other party's Confidential Information; or (iv) in accordance with a judicial or other governmental order, provided the receiving party shall give the disclosing party reasonable opportunity to seek a protective order or equivalent, or obtain written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.

8. **Indemnification.** Partner agrees to indemnify, hold harmless, and defend HomeAway, its

parent company, and their respective employees, directors, contractors and agents (the “Indemnified Parties”) against any losses, claims, liabilities, damages, costs or expenses, including attorneys’ fees and costs of suit, that arise, directly or indirectly, from any acts or omissions attributable to Partner or Partner’s agents, including any breach of any term or condition of this Agreement and any claim arising from the Partner product(s) and/or service(s).

9. **Right to Audit.** HomeAway shall be permitted to conduct an audit, no more frequent than every six (6) months, with respect to the Partner’s payment obligations under this Agreement. Partner shall provide HomeAway with all necessary co-operation, assistance, data, documents, files, papers, information and access to books and records of account and information stored electronically as HomeAway may reasonably request for the purpose of verifying that all Marketing Consideration was remitted. Audits will be conducted on business days during regular business hours. HomeAway shall bear the costs and expenses of the audit unless the audit results in a deviation of any Marketing Consideration owed to HomeAway of more than five percent (5%) in which event Partner shall bear the costs and expenses of the audit and immediately pay to HomeAway the additional Marketing Consideration owed. This section shall survive one (1) year beyond any termination of this Agreement.

10. General Provisions.

A. **Independent Relationship.** Both parties agree that this Agreement is not intended to create and shall not be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. The parties hereto shall not be construed to be the agent, employer, employee, or representative of the other, and will not have the express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party. Partner shall be solely responsible for any relationship it enters into directly with a HomeAway Referral including but not limited to customer service, dispute resolution and refund requests.

B. **Notices.** Any notice under this Agreement must be in writing and shall be effective upon delivery by hand or by registered mail, and addressed to the other party at the corresponding address provided in the Schedule.

C. **Versioning.** This version of the HomeAway Partner Program Terms and Conditions became immediately effective on the “Last Updated” date set forth above and this version amends the version effective prior to such date. HomeAway reserves the right, in its sole discretion, to amend these HomeAway Partner Program Terms and Conditions, in whole or in part, at any time. If the Partner disagrees with any change to this Agreement, then the Partner’s sole remedy is to terminate the Agreement as provided in the Termination for Convenience section.

D. **Integration; Severability.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of the parties’ agreement. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the subject matter hereof, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

E. **Amendments; Assignment.** This Agreement may not be amended except by an instrument in

writing, signed by each of the parties. Failure to exercise any right under this Agreement shall not constitute a waiver of such right. Neither party may assign any rights or obligations under this Agreement, except in the event of a change of control of either party. This Agreement shall be binding upon either party's successors and assigns.

F. **Governing Law; Forum.** This Agreement shall be governed and construed in accordance with the law of the State of Texas, as applied to contracts executed by residents of Texas and performed entirely within the State of Texas without regard to its conflict of laws principles. Any dispute shall be brought in a state or federal court located in Travis County, Texas.

G. **Force Majeure.** Neither party shall be liable for any damages or other losses resulting from failure to perform its obligations under this Agreement where such failure is the result of a cause beyond the party's reasonable control.