

## **VOLUNTARY COLLECTION AGREEMENT**

THIS VOLUNTARY COLLECTION AGREEMENT ("Agreement") is dated December 1, 2020 and is between HOMEAWAY.COM, INC., a Delaware corporation ("HomeAway"), and COUNTY OF HUMBOLDT, a political subdivision of the State of California (the "County"). Each party may be referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS:**

WHEREAS, HomeAway and its subsidiaries operate an internet-based platform that allows Short Term Rental Operators ("Operators") to advertise the availability of their properties to travelers ("Guests") seeking accommodations through various brands and websites, including, but not limited to, HomeAway, Vrbo, and VacationRentals.com ("HomeAway Platform"); and

WHEREAS, HomeAway and the County enter into this Agreement voluntarily in order to facilitate the reporting, collection, and remittance of transient occupancy tax imposed under Title VII, Division 1, Chapter 2 of Humboldt County Code ("TOT") on Operators and Guests on the HomeAway Platform for short-term occupancy of accommodations located in the County in accordance with this Agreement as follows:

NOW, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

### **COLLECTION AND REMITTANCE**

1. With respect to any transaction between an Operator and a Guest booked on and for which payment is completed on the HomeAway Platform for accommodations for which TOT is due, and during the period in which this Agreement is in effect (as defined in 4 below), and pursuant to the terms and conditions of this Agreement, HomeAway agrees to collect and remit TOT.
2. TOT shall be collected and remitted at the applicable rate by HomeAway based upon the gross rents charged and received by the Operator in connection with the transaction, including but not limited to the following fees charged by an Operator: rental fee, service fee, cleaning fee, property damage fee, and any other use-related fee; but excluding refundable damage deposits. HomeAway shall file TOT returns on the form and in the time and manner described in the TOT or as agreed between the parties in writing.
3. HomeAway will provide each Operator with the ability to display a County issued TOT identification number on the HomeAway platform for each short-term rental advertised.
4. HomeAway agrees to commence collecting and remitting TOT starting on December 1, 2020 (the "Effective Date"). For the avoidance of doubt, this Agreement to collect shall not extend to any period or transaction prior to the Effective Date or after the termination of this Agreement, or to any transaction completed through any means, method or platform other than the HomeAway Platform.

5. On a prospective basis upon the Effective Date of this Agreement, and during any period in which this Agreement is in effect, in accordance with the terms of this Agreement, HomeAway agrees contractually to assume liability for any failure to report, collect, and/or remit the correct amount of TOT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with law for any transaction between an Operator and a Guest booked on and for which payment is completed on the HomeAway Platform. Nothing contained herein nor any action taken pursuant to this Agreement, including but not limited to the collection or remittance of TOT, shall impair, restrict, or prevent HomeAway from asserting that any TOT and/or penalties, interest, fines, or other amounts assessed against it were not due or are the subject of a claim for refund under applicable law, or from enforcing any and all rights accorded to it pursuant to law.
6. The County agrees, for the purpose of facilitating this Agreement, that it shall not make any assessment, supplemental assessment, or claim for TOT as to HomeAway for any period prior to the Effective Date of this Agreement; and it releases and discharges any claims against HomeAway (and its present or former: successors, direct or indirect members, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors and shareholders) from any and all past, present, or future assessments, causes of action, claims, demands, expenses, damages, or losses, of whatever kind or nature, known or unknown, asserted or unasserted, in law or equity, whether statutory or common law, which existed, accrued, or arose related to the TOT for the period preceding the Effective Date of this Agreement.

#### **JURISDICTIONAL BOUNDARIES AND TAX RATE AREAS**

7. HomeAway will use its best efforts to accurately determine geographic boundaries applicable to each specific property thought to be in the County. HomeAway agrees to cooperate in any audit, including any audit to help confirm the jurisdictional boundaries of the County.
8. If the County has more than one defined tax rate area within their boundaries that are subject to different tax rates, including Tourism Improvement Districts (TID) or Business Improvement Areas (BIA), County shall provide boundary information to HomeAway and HomeAway shall apply the appropriate total tax rate to each of those defined areas and shall report and remit the tax for each defined area to the County, separately or as agreed to between the parties.

#### **COMPLIANCE AND AUDIT**

9. Upon the County's request in connection with an audit, HomeAway shall submit all applicable transaction data based on reservation ID, or other type of transaction ID, as maintained by HomeAway in its ordinary course of business. The Parties agree that HomeAway is not required, on the basis of this Agreement, to produce any Operator or Guest name or address relating to any transaction in connection with an audit or otherwise.
10. During any period in which this Agreement is in effect, nothing in this Agreement shall relieve Guests or Operators from any responsibilities with respect to TOT, including, without limitation, any obligation to register with the County or to collect, remit, and report TOT for

transactions completed through any other means, method, device, or platform, or restrict the County from investigating or enforcing any provision of applicable law against any such person or entity for any occupancy arranged directly or indirectly through any other means.

11. During any period in which this Agreement is in effect, and with respect to any transaction for which TOT is due or paid pursuant to this Agreement, the County agrees to audit HomeAway in the same manner as an Operator as provided in the TOT, except: HomeAway will not be required on the basis of this Agreement to disclose the Operator or Guest name or property address, except pursuant to a lawfully issued subpoena.

### **CONFIDENTIALITY**

12. Any and all tax returns, transaction data, financial records or documents provided to the County in connection with this Agreement, including but not limited to any audit, shall be deemed confidential and shall not be shared with any third party, including but not limited to any other governmental agency or any other jurisdiction, except as required by law.

### **LIMITATION**

13. This Agreement is solely for the purpose of facilitating the administration and collection of TOT due for transactions booked on and for which payment is completed on the HomeAway Platform. It is expressly understood and agreed by the Parties that neither Party has made any concessions regarding the merits of its respective positions nor the merits of the other Party's positions with respect to the collection of TOT addressed in this Agreement.
14. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto.
15. The County agrees to work with HomeAway to answer any questions received from Operators and the public about HomeAway's tax collection and remittance process under this Agreement. If requested by the County, HomeAway will provide information to the County to be used by the County to answer questions from Operators, travelers and others.

### **MODIFICATION / TERMINATION**

16. No modification of this Agreement shall be effective unless in writing and signed by both parties. This Agreement may be terminated by HomeAway or the County upon 90 days' written notice to the other Party, or upon 30 days' written notice from the County if a material breach of this Agreement is identified. Any termination under this Paragraph shall not affect the duty of HomeAway to remit to the County any TOT collected from Guests up through and including the effective date of the termination of this Agreement, even if not remitted by HomeAway to the County as of the date of termination.

### **NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE**

17. By executing this Agreement, HomeAway certifies that it is not a Nuclear Weapons Contractor, in that HomeAway is not knowingly or intentionally engaged in the research,

development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. HomeAway agrees to notify the County immediately if it becomes a Nuclear Weapons Contractor as defined above. The County may immediately terminate this Agreement if it determines that the foregoing certification is false or if HomeAway subsequently becomes a Nuclear Weapons Contractor.

### **CALIFORNIA STATUTE**

18. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of California.
19. The Parties represent and warrant that they each have the legal authority to enter this Agreement, that the person executing the Agreement of behalf of either Party is authorized to do so, and that the Agreement shall be binding and enforceable when duly executed and delivered by each Party.
20. This Agreement is executed in two (2) counterparts, each of which shall be deemed an original.
21. This Agreement has been jointly prepared by the Parties hereto and shall not be construed more strictly against either Party.

### **ASSIGNMENT**

22. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party which consent shall not be unreasonably withheld. Notwithstanding the foregoing, HomeAway may assign this Agreement in its entirety without the County's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement and all TOT and all other sums due at the time of the attempted assignment have been paid in full. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.
23. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing, postage prepaid; or (iii) the second business day after sending by overnight mail, by facsimile with telephonic confirmation of receipt, or by email. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To HomeAway: HomeAway.com, Inc.  
Attn: Tom Pucci  
1111 Expedia Group Way, West  
Seattle, WA 98119  
Email: tpucci@expediagroup.com

*With a copy to:* HomeAway.com, Inc.  
Attn: Christy Vernor  
11920 Alterra Pkwy  
Austin, TX 78758  
Email: cvernor@expediagroup.com

To the: County of Humboldt, California  
825 5<sup>th</sup> Street, Room 111  
Eureka, CA 95501

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

HomeAway:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Tom Pucci

Title: \_\_\_\_\_

**COUNTY OF HUMBOLDT:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Estelle Fennel  
Chair, Humboldt County Board of Supervisors

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Risk Management