

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release (this “Agreement”) dated for convenience of reference as of May 1, 2017, is between the City and County of San Francisco including the Office of Short-Term Rentals (“OSTR”) (collectively, the “City”) on the one hand, and HomeAway.com, Inc. (“HomeAway”) on the other hand. The City and HomeAway are sometimes referred to below collectively as “Parties” and individually as a “Party.”

RECITALS

A. Since February 2015, San Francisco law has permitted residents to rent out their residential units on a short-term basis (“applicants”) if they first register their units with the City, which assigns each unit a registration number and lists it on a City-run registry. S.F. Admin. Code § 41A.5(g)(1)(E), (g)(3)(A).

B. In August 2016, the City enacted an ordinance (the “Ordinance”), which, *inter alia*, amended the San Francisco Administrative Code to provide as follows in Section 41A.5(g)(4)(C): “A Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when those Residential Units are lawfully registered on the Short Term Residential Rental Registry at the time the Residential Unit is rented for short term rental.” The Ordinance also requires Hosting Platforms to submit an “affidavit to the [OSTR] verifying that the Hosting Platform has complied with subsection (g)(4)(C) of this Section 41A.5 in the immediately preceding month.” *Id.* § 41A.5(g)(4)(D).

C. In September 2016, HomeAway filed a First Amended Complaint (“Complaint”) in the United States District Court for the Northern District of California challenging Sections 41A.5(e) and 41A.5(g)(4)(C)-(E) of the Ordinance (“Challenged Provisions”), and seeking to enjoin their enforcement (the “Litigation”). Airbnb Inc. (“Airbnb”) also filed a First Amended Complaint challenging the same provisions.

D. Airbnb and HomeAway assert in the Litigation, among other things, that the Ordinance conflicts with and is preempted by the Communications Decency Act of 1996, 47 U.S.C. § 230 (the “CDA”), and violates the First and Fourteenth Amendments because it imposes an impermissible content-based regulation on speech, imposes criminal liability without proof of *mens rea* or scienter, and is impermissibly vague.

E. On November 8, 2016, the Court denied Plaintiffs’ request for a preliminary injunction. *See* Dkt. No. 74. The Court later issued a temporary restraining order enjoining enforcement of the law. Dkt. No. 86.

F. On April 14, 2017, the City enacted an amendment to the Ordinance providing that a platform complies with Section 41A.5(g)(4)(C) by “exercis[ing] reasonable care to confirm that” applicant listings are lawfully registered on the City’s Short Term Residential Rental Registry for short-term rental, which includes “compl[ying] with administrative guidelines issued by the” OSTR.

G. HomeAway continues to object to the Ordinance on the grounds that it is preempted by the CDA and unconstitutional. HomeAway enters into the Agreement because it provides HomeAway with a safe harbor for compliance under the Ordinance and permits the creation of a pass-through registration system developed in cooperation with the City that facilitates the online registration of applicants from the HomeAway websites.

H. The City continues to assert that the Ordinance is not preempted by the CDA and is constitutional.

I. The Parties recognize and agree that it is in their mutual best interests to resolve their differences as set forth below, and have engaged in arm’s-length negotiations in an effort to resolve the Litigation informally.

J. The Parties also recognize and agree that the agreements and releases set forth below represent the Parties’ compromise of disputed matters to avoid the further disruption and expense of the Litigation.

ACCORDINGLY, in view of the foregoing Recitals, and in consideration of the agreements and the releases set forth below, the Parties agree as follows:

AGREEMENT

1. SETTLEMENT TERMS

1.01 Definitions. Unless otherwise defined in this agreement, all initially capitalized terms have the same meaning as in Chapter 41A of the San Francisco Administrative Code.

1.02 Geographic Scope. This Agreement, and the obligations imposed on the Parties, are limited to listings for short-term residential units located in the City and County of San Francisco, California.

1.03 Effective Date. This Agreement shall be effective as of the date the resolution referenced in Section 1.12, *infra*, is introduced at the San Francisco Board of Supervisors, as shown by the date of introduction that the Clerk of the Board enters on the Board’s website for legislation.

1.04 Calculation of Days. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days.

1.05 Implementation Date. 120 days from the Effective Date, which will be the date on which HomeAway’s Pass-through Registration System (“PTR System”) will go live, and on which implementation of the Agreement will commence.

1.06 Implementation Period. The 120-day period following the Implementation Date during which the Parties will implement an agreed-upon framework for applying this Agreement to the existing HomeAway population in San Francisco.

1.07 Office of Short-Term Rental (“OSTR”) Enforcement of Section 41A.5(g)(4)(C) Against HomeAway. The following terms shall govern OSTR’s enforcement of Section 41A.5(g)(4)(C) with respect to HomeAway:

A. Starting on the Implementation Date, HomeAway will include mandatory fields in which its applicants will be required to input their OSTR registration numbers and expiration dates, or where applicable, their OSTR application pending status, subject to the terms of the agreed-upon framework developed by the Parties pursuant to Section 1.09(B)(1). Only the registration numbers or pending status will be displayed publicly on listings.

B. Beginning at the close of the Implementation Period, HomeAway will provide OSTR, on a monthly basis, a list of all San Francisco listings on its platform with the following information (“HomeAway Monthly Listings”):

- a. listing ID number;
- b. OSTR registration number or application pending status;
- c. the expiration date for the OSTR registration; and
- d. zip code of the listing, as provided by the applicant.

HomeAway shall send this information via electronic mail (“email”) to the City at the following email address (kevin.guy@sfgov.org or such other City email address as the City may notify HomeAway of in writing) or with the written agreement of both parties via an application programming interface.

During the Implementation Period, HomeAway will provide OSTR information about San Francisco listings on its platform according to the terms of the agreed-upon framework developed by the Parties under Section 1.09(B)(1), *infra*.

C. Starting the week after OSTR receives the first HomeAway Monthly Listing, OSTR shall notify HomeAway by close of business on the first business day of each week of any listings that OSTR has determined are ineligible for registration (the "OSTR Notification"). By close of business on the first business day of each week, OSTR will, when it has identified such listings, provide HomeAway with:

1. A spreadsheet including the following information:
 - a. Listing ID number;
 - b. OSTR registration number or application pending status associated with the identified listing;
 - c. One of the following codes indicating the basis for the listing ineligibility:
 1. the listing lacks a valid registration number;
 2. the listing has an expired registration;
 3. the listing has had its registration application denied; or
 4. the listing has had its registration revoked
2. Copies of the OSTR letters sent to applicants indicating the bases for the registration ineligibility, which HomeAway may share directly and/or communicate about with the applicant.
3. A list of all registration applications that OSTR approved during the period since the last OSTR Notification for applications submitted via the HomeAway PTR System. This will include the name, address, listing ID number, and the registration numbers associated with those applications.

OSTR shall send this information via electronic mail ("email") to HomeAway at the following email address sanfranciscoweeklyreport@homeaway.com (or such other email address as HomeAway may notify the City of in writing) or with the written agreement of both parties via an application programming interface. If OSTR will not be sending to HomeAway an OSTR Notification for a given week, it shall notify HomeAway of this by the close of business on the first business day of each week.

Notice that is sent via email to the designated email address shall be deemed effective and complete at the time it is sent, unless (1) OSTR receives an error message that the message was not delivered or (2) HomeAway informs OSTR by 12:00 pm on the

second business day of the week that a technical error prevented the message from timely being delivered to HomeAway.

During the Implementation Period, OSTR shall notify HomeAway of any listings that OSTR has determined are ineligible for registration according to the terms of the agreed-upon framework developed by the Parties pursuant to Section 1.09(B)(1), *infra*.

D. Following HomeAway's receipt of an OSTR Notification, HomeAway shall:

1. Deactivate by close of business on the third business day following the notification all listings identified in the OSTR Notification as ineligible for registration;
2. Cancel all then-pending online reservations for all listings identified in the OSTR Notification as ineligible for registration, except those that are scheduled to commence within 6 business days after the date of receipt of the OSTR Notification.

E. HomeAway and its officers, directors, employees, and agents, shall be deemed to be in compliance with Section 41A.5(g)(4)(C) as long as the requirements set forth in Sections 1.07(A), (B), and (D), *supra*, are satisfied.

F. OSTR will continue its practice of not imposing liability on applicants while their OSTR applications are pending. OSTR will also exercise its prosecutorial discretion to not impose liability on HomeAway for providing Booking Services while applicants' OSTR applications are pending, as evidenced by the presence of an OSTR application pending status on listings.

G. OSTR may notify HomeAway of OSTR's belief that a particular applicant has submitted repeated applications in bad faith. In such circumstances, OSTR and HomeAway will confer to identify possible solutions.

H. Meet-and-Confer and Escalation Process:

1. Upon receipt of an OSTR Notification, HomeAway and the City may meet and confer regarding any listings identified in the OSTR Notification if HomeAway believes that a listing was identified erroneously in the OSTR Notification.
2. The City shall not pursue enforcement, including retroactively, regarding any particular listing until after the period of time the Parties engage in a meet-and-confer process, including the escalation process discussed below, concerning that listing.

3. Additionally, for five weekly OSTR Notifications in each twelve-month period, the City shall provide HomeAway with notice and two business days to cure any alleged violations before pursuing any enforcement against HomeAway under Section 41A.5(g)(4)(C).
4. OSTR will not refer a case to the City Attorney's Office or the District Attorney's Office unless and until OSTR first meets and confers with HomeAway.
5. If any issues are not resolved during the meet-and-confer process, HomeAway and the City agree to escalate any dispute to the Honorable Jacqueline Corley, or, if she is unavailable, a mutually agreeable individual.
6. The meet-and-confer and escalation process described in this section also will apply to any other dispute that arises between the Parties under the Agreement, including but not limited to disputes over whether an amendment to Chapter 41A constitutes a Material Change pursuant to Section 1.11(A), *infra*, and disputes over whether a delay in the roll-out of the PTR system or implementation process is a basis for termination of the Agreement pursuant to Section 1.09(C), *infra*.

I. HomeAway, and its officers, directors, employees, and agents, shall be deemed to be in compliance with Section 41A.5(g)(4)(D) by HomeAway's providing a signed document in the form attached as Exhibit A on the fifth business day of every month beginning 120 days after the Implementation Date.

J. As contemplated by the recent amendment to Section 41A.5(g)(4)(C) of the San Francisco Administrative Code, OSTR intends to publish administrative guidance setting forth methods by which Hosting Platforms can exercise reasonable care to confirm that a Residential Unit is lawfully registered on the Short-term Rental Registry, including taking the steps outlined in Section 1.07(A)-(D) of this Agreement.

1.08 Pass-Through Registration System.

A. HomeAway may use a pass-through registration system that sends applicant OSTR registration application information directly to the OSTR ("PTR System"). HomeAway also may process renewals of OSTR registrations for applicants with existing registrations through its PTR System.

B. The PTR System shall transmit data to the City via an application programming interface ("PTR API").

C. The information and documentation HomeAway collects from applicants and transmits to the City as part of its PTR System (for both new applications and renewal applications) are identified in Exhibit B to this Agreement.

D. In creating its PTR System, HomeAway shall use the City's existing online payment processing services for OSTR registration applications, which may be linked to by—or, with the consent of both Parties, embedded within (e.g., using an inline frame)—the HomeAway PTR System. HomeAway may use a different payment methodology for OSTR registration applications with the consent of both Parties.

E. In creating its PTR System, HomeAway shall give applicants the option of using the City's online method for obtaining a business registration certificate from the San Francisco Treasurer and Tax Collector. The PTR System may link to—or with the consent of both Parties embed (e.g., using an inline frame)—the San Francisco Treasurer and Tax Collector's online application form for business registration certificates.

F. Upon applicants' completion of their OSTR registration applications via the PTR System and transmission of data to OSTR, HomeAway shall pre-populate a field on applicants' HomeAway listings with an application pending status.

G. The City shall transmit to HomeAway applicants' OSTR registration numbers and expiration dates for approved OSTR registration applications submitted via the PTR System, *see* Section 1.07(C), *supra*. Upon receipt, HomeAway shall pre-populate a field on applicants' HomeAway listings with their OSTR registration numbers and expiration dates, although only the registration numbers will be displayed publicly.

1.09 Development of PTR System and Implementation of Agreement.

A. Development of PTR System.

1. In cooperation with the City, HomeAway shall have 120 days from the Effective Date to develop and roll-out its PTR System on the Implementation Date.
2. The Parties shall collaborate in the development and rollout of the PTR System. The City shall make available to HomeAway relevant technical information and personnel knowledgeable regarding the City's systems to ensure the proper operation of the PTR System and interconnection with the City's systems. HomeAway shall make available to the City relevant technical information and personnel knowledgeable regarding HomeAway's PTR System to ensure the proper interconnection with the City's systems.

3. HomeAway, in conjunction with Airbnb, shall develop an open standard PTR API that other Hosting Platforms may use in their own PTR Systems to transmit data to the City and receive data from the City, so long as they comply with all other applicable requirements, including payment of relevant fees to the City.
4. As of the Implementation Date, applicants who enter new listings on HomeAway in San Francisco shall be required to input their OSTR registration numbers and expiration dates in their listings, or, where applicable, OSTR application pending status. If the applicant for the new listing does not have an OSTR registration number or an OSTR application pending status, the applicant will be instructed to go through the PTR System to apply for an OSTR registration or apply directly with the City.
5. Within thirty (30) days of the Effective Date, or within fourteen (14) days of the date of the Mayor's approval of the Board of Supervisor resolution referenced in Section 1.12, *infra*, whichever is later, HomeAway shall reimburse the City \$40,000 in immediately available funds for the costs to build a system that facilitates pass-through registration from HomeAway. In the event the City agrees to permit another platform to build a pass-through registration system under the Ordinance and that platform is not required to make a cost reimbursement payment to the City of at least \$40,000 for the establishment of that system, the City shall pay HomeAway the difference between \$40,000 and the payment by the other platform. The City may elect to pay that amount to HomeAway in the form of credit against any ongoing annual payments owed by HomeAway to the City pursuant to Section 1.09(A)(6), *infra*.
6. Beginning in 2018, HomeAway shall pay the City \$5,000 annually to reimburse the City of its costs of maintaining and operating the system, with such payment to be made no later than January 31 of each year. In the event the City agrees to permit another platform to make an annual maintenance and operations cost reimbursement payment of less than \$5,000, HomeAway may also, going forward, pay that lower annual fee to the City.
7. In the event that the City reaches an agreement concerning compliance with Section 41A.5(g)(4)(C)-(D) of the San Francisco Administrative Code with another platform, the City shall promptly provide a copy of that agreement to HomeAway, and HomeAway shall have the option of using the compliance mechanism under the terms of that agreement in lieu of this Agreement. In such event, HomeAway must, within thirty (30) days

of receipt of the other agreement, notify the City in writing of HomeAway's intent to abide by the compliance mechanism of that other agreement.

B. Implementation of Agreement.

1. Starting on the Implementation Date, the Parties shall work in good faith to implement an agreed-upon framework for applying this Agreement to the existing HomeAway population in San Francisco. The Parties will work diligently to complete an agreed draft of the framework no later than June 15, 2017. If they are unable to do so, they will escalate any dispute to Magistrate Judge Jacqueline Corley, or, if she is unavailable, a mutually agreeable individual. The Parties shall have 120 days from the Implementation Date to complete the process for the existing HomeAway population.
2. Except as set forth in the framework developed by the Parties under Section 1.09(B)(1), *supra*, the City shall not pursue enforcement against HomeAway, including its officers, directors, employees, and agents, under Section 41A.5(g)(4)(C) until after the expiration of the Implementation Period and a reasonable meet-and-confer effort pursuant to Section 1.07(H).

C. Delay in Rollout of PTR System and Implementation of Agreement.

1. The Parties shall each use their best efforts to develop and roll out the PTR System and implementation process according to the timelines set forth in this Agreement.
2. Any delay in the rollout of the PTR System and the implementation process that is in whole or in part caused by the City shall not be a basis for termination of this Agreement by either Party.
3. Any delay in the rollout of the PTR System and the implementation process that is in whole or in part caused by unforeseen causes or circumstances that cannot reasonably be mitigated by HomeAway shall not be a basis for termination of this Agreement by either Party. The Parties shall work in good faith to timely effectuate the implementation and, if applicable, engage in a meet-and-confer effort pursuant to Section 1.07(H).
4. All applicable deadlines in the Agreement shall be tolled day-for-day for any delay in the rollout of the PTR System and the implementation

process that is in whole or in part caused by the City or by unforeseen causes or circumstances that cannot reasonably be mitigated by HomeAway.

1.10 Appeal Procedure for Applicants. Within thirty (30) days of the Effective Date, or within fourteen (14) days of the date of the Mayor's approval of the Board of Supervisor resolution referenced in Section 1.12, *infra*, whichever is later, OSTR shall issue the Administrative Guidance attached as Exhibit C.

1.11 Effect of Changes in San Francisco Law and OSTR Guidance; Tolling Provisions.

A. If there are material changes to Chapter 41A of the San Francisco Administrative Code or any other municipal code provision relating to short-term rentals ("Material Changes") following the Effective Date, HomeAway shall have the ability and option to withdraw from this Agreement, in its entirety, by giving written notice to the City, including a description of the Material Change(s), after meeting and conferring with the City per Section 1.07(H), *supra*. A list of Material Changes within the meaning of this provision is set forth in Exhibit D.

B. The City will provide notice to HomeAway of any proposed change to Chapter 41A of the San Francisco Administrative Code, or any other municipal code provision relating to short-term rentals, within two (2) business days of the legislation being submitted to the Clerk of the Board of Supervisors. Notice pursuant this this Section shall be sent via email and U.S. mail to:

Ambika K. Doran
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA
ambikadoran@dwt.com

Kristina Bennard
Expedia, Inc.
333 108th Avenue NE
Bellevue, WA 98004
kbennard@expedia.com

If HomeAway believes that any proposed change to Chapter 41A or any other municipal code provision relating to short-term rentals would constitute Material Changes within the meaning of this Agreement, it will provide written notice to the City including a description of the Material Change(s), and the Parties shall meet and confer regarding such changes and the possibility of HomeAway's withdrawal from the Agreement before

the Honorable Jacqueline Corley or, if she is unavailable, a mutually agreeable individual.

C. In the event that HomeAway withdraws from the Agreement pursuant to this Section, this Agreement shall be null and void and of no force or effect, with the exception of the tolling provisions set forth in Section 1.11(D), *infra*. The Parties shall be returned to the legal positions they occupied prior to execution of this Agreement, with the exception that the City shall not be required to pay back any funds remitted to the City pursuant to Section 1.09(A), *supra*.

D. In the event that HomeAway withdraws from this Agreement, any statute of limitations, statute of repose, or other time-related defense based on federal, state or other law, or the common law, whether at law, at equity, or otherwise (including, but not limited to, defenses based on the doctrines of waiver, laches, acquiescence, or estoppel) (“Time-Related Defenses”) that may be applicable to any of the claims asserted by HomeAway in the Litigation against the City (“HomeAway’s Claims”) will be deemed tolled and shall not have run at any time during the period beginning on the Effective Date and for as long as this Agreement is in effect (“Tolling Period”).

1. The City agrees not to assert directly or indirectly, plead, raise by defense or avoidance arising as a result of the lapse of time occurring during the Tolling Period, or otherwise rely on any passage of time during the Tolling Period in asserting any Time-Related Defenses with respect to any of HomeAway’s Claims.
2. The City agrees not to assert directly or indirectly that any conduct by HomeAway occurring during the Tolling Period, other than specific alleged violations of this Agreement, constitutes a violation of Section 41A.5(g)(4)(C) that gives rise to liability under Chapter 41A.
3. HomeAway agrees not to assert directly or indirectly that the passage of time or any act or omission occurring during the Tolling Period gives rise to any liability or basis for enhancement of damages or pre-judgment interest.

E. In the event that there are changes to any provision of the OSTR’s administrative guidance with respect to Chapter 41A of the San Francisco Administrative Code, HomeAway shall have the option of complying with any modified OSTR administrative guidance in lieu of some or all of the guidance implemented as a result of this Agreement, but HomeAway shall not have the obligation to do so, i.e., it may “opt into” such guidance. In such event, HomeAway must notify the City of its intent to “opt into” such guidance.

1.12 Board Endorsement. Upon execution and delivery of this Agreement by HomeAway, the San Francisco City Attorney's Office will submit a resolution to the Board of Supervisors endorsing the Agreement and approving its tolling provisions. The failure of the Board of Supervisors or Mayor to approve the resolution shall render this Agreement null and void, and of no force or effect. The Parties shall be returned to the legal positions they occupied prior to execution of this Agreement.

1.13 Filing of Dismissal. Within thirty (30) days of the Effective Date, or within fourteen (14) days of the date of the Mayor's approval of the Board of Supervisor resolution referenced in Section 1.12, *supra*, whichever is later, HomeAway shall file with the Court a stipulation of dismissal without prejudice of the entire Litigation.

2. RELEASE PROVISIONS

2.01 Specific Release of the City by HomeAway. In consideration of the City's agreements and undertakings under this Agreement, and with the exception of the claims reserved in Section 2.03, *infra*, and with the further exception of the rights, duties and obligations created by this Agreement, HomeAway releases and discharges the City, and its officers, directors, employees, attorneys, and agents, from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses, of whatever nature, type, kind, description or character, whether known or unknown, which HomeAway does, did, or might have, own, or hold, on or before the Effective Date, with respect to the Challenged Provisions in the Litigation.

2.02 Specific Release of HomeAway by the City. In consideration of HomeAway's agreements and undertakings under this Agreement, and with the exception of the claims reserved in Section 2.03, *infra*, and with the further exception of the rights, duties and obligations created by this Agreement, the City releases and discharges HomeAway, and each of its predecessors, successors, affiliates, subsidiaries, and its current or former officers, directors, employees, attorneys, and agents, from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses, of whatever nature, type, kind, description or character, whether known or unknown, which the City does, did, or might have, own, or hold, on or before the Effective Date, with respect to the Challenged Provisions in the Litigation.

2.03 Matters Not Released, Continuing Jurisdiction of Court.

A. Notwithstanding anything in this Agreement, the Parties do not release any matters relating to the adherence to and enforcement of this Agreement.

B. Notwithstanding anything in this Agreement, HomeAway does not release any objections, defenses, claims, or other legal arguments under the Stored Communications Act, 18 U.S.C. 2701 et seq., the Fourth Amendment to the United States Constitution, or any other laws, statutes, regulations, or doctrines, in response to any subpoena issued by the City.

C. The Parties agree that the Honorable Jacqueline Corley, or her successor as named by Judge Corley and agreed upon by the Parties, will retain jurisdiction over this lawsuit for purposes of enforcing and ensuring compliance with this Agreement pursuant to 28 U.S.C. § 636. The parties intend for this procedure to comply with the requirements for enforcement of settlement agreements in federal court set forth in *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994).

D. This Agreement shall not be construed as preventing the Parties from seeking further relief, including further injunctive relief, based upon events occurring after the Effective Date of this Agreement.

3. MISCELLANEOUS PROVISIONS

3.01 Fair, Adequate, and Reasonable Settlement. Each of the Parties believes this settlement is fair, adequate, and reasonable, and arrived at this Agreement in arm's-length negotiations, taking into account all relevant factors, present and potential.

3.02 Authority. Each Party represents and warrants to each other that the person executing this Agreement on its behalf has full authority and capacity to execute this Agreement and to give the releases and other promises contained in this Agreement, subject to Section 1.12, *supra*. If this representation is false or inaccurate, and any claim or matter is asserted against a party by anyone who is the assignee or transferee of such a claim or matter, then the Party which assigned or transferred such claim or matter shall fully indemnify, defend, and hold harmless the Party against which such claim or matter is asserted and its successors from and against such claim or matter.

3.03 Voluntary Agreement. Each of the Parties acknowledges that the Agreement has been fully read, reviewed and understood by its authorized signatory and that each Party signs the same freely and voluntarily.

3.04 Independent Advice of Counsel. Each of the Parties represents and declares that, in executing this Agreement, it has relied solely upon its own judgment, belief and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of his or her rights and claims. The Parties acknowledge that they have executed this Agreement without fraud, duress, or undue influence.

3.05 Entire Agreement/Construction and Interpretation. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the settlement of their disputes that are the subject of this Agreement, and it supersedes and replaces all prior negotiations, proposed agreements, and agreements related to such disputes. Each of the Parties acknowledges that no other party, nor any agent, representative or attorney of any other party, has made any promise, agreement, covenant, representation or warranty whatsoever, express or implied, concerning the subject matter of this Agreement that is not contained in this Agreement.

3.06 Inurement. The Agreement shall inure to the benefit of and be binding upon each of the Parties and its respective agents, partners, joint venturers, officers, directors, trustees, attorneys, representatives, assigns, subsidiaries, parent companies, and predecessor or successor companies.

3.07 No Third-Party Beneficiaries. The Parties do not intend to create any third-party beneficiaries to this Agreement. Except for agents, partners, joint venturers, officers, directors, trustees, attorneys, representatives, assigns, subsidiaries, parent companies, and predecessor or successor companies, no person or entity other than the Parties is intended to be bound by, or shall be bound by, any of the provisions of the Agreement. Except as set forth in Section 1.07(F), *supra*, nothing in this agreement shall preclude the City from taking action against individual applicants for violation of Chapter 41A of the San Francisco Administrative Code.

3.08 Waiver and Amendment. A non-breaching Party may waive the breach of any provision of this agreement only by executing a writing. Waiver of any breach shall not be deemed to be a waiver of any other breach of the same or any other provisions of this Agreement. This Agreement may not be modified, amended, supplemented, or terminated except by a written agreement executed by both the Parties.

3.09 Attorneys' Fees and Costs. Each of the Parties agrees to bear its own fees and costs in connection with the negotiating and execution of this Agreement and in connection with the Litigation.

3.10 Enforcement. Upon a breach by any Party, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance by the other Party in breach of its obligations.

3.11 Governing Law. This Settlement Agreement is being executed in the State of California, and shall be deemed to be made under, and shall be interpreted in accordance with, the laws of the State of California and the laws of the United States, as applicable.

3.12 Headings. Captions, section headings, and numbers have been set forth in this Agreement for convenience only and are not to be used in construing this Agreement.

3.13 **Further Assurances.** Following the execution of this Agreement, the Parties agree to take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to effectuate the purposes of this Agreement.

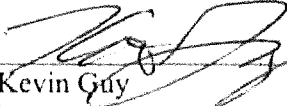
3.14 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument. The Parties will accept facsimile or emailed PDFs of the signature pages provided that the original signature pages are mailed to the other Party's counsel.

IN WITNESS OF THIS AGREEMENT, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

PLEASE READ THIS DOCUMENT CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A SPECIFIC RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS ARISING FROM THE LITIGATION AS DEFINED IN THIS AGREEMENT.

AGREED AND ACCEPTED
City and County of San Francisco

DATE: 4/30/17

By: 
Kevin Guy
Director
Office of Short-Term Rentals

AGREED AND ACCEPTED
HomeAway.com, Inc.

DATE: _____

By: _____
Angela Niemann
Senior Vice President, Legal

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AGREED AND ACCEPTED
City and County of San Francisco

DATE: _____

By: _____
Kevin Guy
Director
Office of Short-Term Rentals

AGREED AND ACCEPTED
HomeAway.com, Inc.

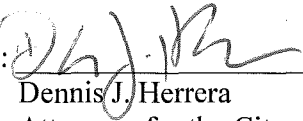
DATE: May 1, 2017

By: Angela Niemann
Angela Niemann
Senior Vice President, Legal

Approved as to Form and Content:

Dated: 5/11/17

DENNIS J. HERRERA
CITY ATTORNEY

By: 
Dennis J. Herrera
Attorneys for the City and County of San
Francisco

Dated: _____

DAVIS WRIGHT TREMAINE LLP

By: _____
Ambika K. Doran
Attorneys for HomeAway.com, Inc.

Approved as to Form and Content:

Dated: _____

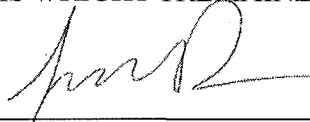
DENNIS J. HERRERA
CITY ATTORNEY

By: _____

Dennis J. Herrera
Attorneys for the City and County of San
Francisco

Dated: May 1, 2017

DAVIS WRIGHT TREMAINE LLP

By:  _____

Ambika K. Doran
Attorneys for HomeAway.com, Inc.

EXHIBIT A



MONTHLY COMPLIANCE
[_____, 2017 through _____, 2017]

On behalf of HomeAway.com, Inc. (“HomeAway”), I verify that to the best of my knowledge, HomeAway complied with Section 41A.5(g)(4)(C) of the San Francisco Administrative Code for the period _____ 5, 2017 through _____ 4, 2017. Because I make this verification on behalf of a corporation, the facts supporting the verification are not necessarily within my personal knowledge or within the personal knowledge of any single individual. Subject to these limitations, this verification is true to the best of my knowledge.

Dated: _____, 5, 2017.

[Printed name]

[Title]

EXHIBIT B

SAN FRANCISCO OFFICE OF SHORT-TERM RENTAL APPLICATION ELEMENTS

APPLICANT INFORMATION	
Field	Comments
Name (Primary Contact)	
Email Address	
Phone	
Current Address	
Own/Rent	
Monthly rent	Applicable only if applicant is a renter. Platforms will inform applicants at this stage of the City's restriction on gross proceeds exceeding rent for rent-controlled units
MANAGING AGENT INFORMATION	
Field	Comments
Managing Agent Name (Primary Contact)	
Email Address for Managing Agent	
Phone for Managing Agent	
UNIT INFORMATION	
Field	

How long applicant has resided at this address (Years/Months)	
Number of bedrooms	
RENTAL INFORMATION	
Field	
Nature of use	Choices are hosted, unhosted, or combination. Platforms may add language informing applicants that their selection isn't binding, but rather used by the City for informational purposes.
AFFIDAVIT	
Field	
Text of affidavit below	Applicants will be required to check a box indicating their consent to the affidavit language.
REQUIRED DOCUMENTS	
Requirement	
A current Driver's License or State issued ID card and one of the following documents which show address of unit to be registered: <ol style="list-style-type: none"> 1. Proof of a Homeowner's Tax Exemption 2. Original utility bill issued by a public utility or PG&E 3. Vehicle registration 4. Proof of car insurance 5. Voter registration card or certificate 	Platforms will provide applicants with the ability to upload a photograph or copies of the documents, and transmit these files to the City via the pass-through registration API.
Lease Agreement	OSTR shall not require all applicants to submit their lease agreements.

	<p>OSTR reserves the right to request a lease agreement from any particular applicant if it believes that the lease is necessary for processing that application. OSTR will communicate directly with the applicant, and not through HomeAway, to obtain the lease. OSTR will act reasonably in making such requests and not automatically/unduly make such requests. Per Section 1.07(F) of the Settlement Agreement, the applicant may continue to list with an application pending status.</p> <p>After 12 months from the Execution Date, OSTR, if it deems a lease requirement for all applicants necessary for its enforcement efforts, may re-institute the lease requirement for all new applicants by requiring applicants to send their leases separately to the OSTR apart from the PTR System.</p> <p>HomeAway would have no obligation to upload and transmit leases to the OSTR in the event that the lease requirement is re-instituted. When an applicant using the HomeAway PTR System submits an application, the applicant will be provided with an application pending status, prior to the applicant separately sending the lease agreement to the OSTR.</p>
REGISTRATION FEE	
Field	
Registration Fee confirmation number	As a step in the pass-through registration, applicants can be sent to City website to make payment (\$250), get a payment confirmation number, then enter the number in the application.
BUSINESS REGISTRATION CERTIFICATE	
Field	

Business Registration Certificate number	As a step in the pass-through registration, applicants can be sent to City website to apply for and obtain a Business Registration Certificate number, then enter the number in the application.
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Full Text of Affidavit: I authorize, under penalty of perjury, that the information contained in this application and all documents provided in connection with this application are accurate and complete. Furthermore, I certify that I have reviewed and will comply with all other requirements of the San Francisco Planning Code, Building Code and other applicable laws, including but not limited to:

- Residing in the registered unit for no less than 275 nights a year;
- Maintaining records for two years which demonstrate compliance with the Short-Term Residential Rental Ordinance;
- Paying all applicable taxes;
- Not using vehicles, tents, un-permitted buildings, sheds, or outdoor/rooftop areas for short-term rental sleeping areas;
- Posting clearly printed signs inside the front of the unit that provide information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits and pull fire alarms; and
- Reporting quarterly to the Office of Short-Term Rentals (“OSTR”), the number of nights the residential unit has been rented as a short-term residential rental.

I understand that failure to comply with any of the above listed conditions, in addition to those set forth in the Short-Term Rental Ordinance, will be cause for enforcement action by OSTR, resulting in the accrual of fines and penalties and/or prohibition from the Short-Term Residential Rental Registry.

SAN FRANCISCO OSTR APPLICATION RENEWAL ELEMENTS

APPLICANT INFORMATION	
Field	Comments
Name (Primary Contact)	
Email Address	
Phone	
Current Address	

AFFIDAVIT	
Field	
Text of affidavit below	

Full Text of Affidavit: I authorize, under penalty of perjury, that the information contained in this application and all documents provided in connection with this application are accurate and complete. Furthermore, I certify that I have reviewed and will comply with all other requirements of the San Francisco Planning Code, Building Code and other applicable laws, including but not limited to:

- Residing in the registered unit for no less than 275 nights a year;
- Maintaining records for two years which demonstrate compliance with the Short-Term Residential Rental Ordinance;
- Paying all applicable taxes;
- Not using vehicles, tents, un-permitted buildings, sheds, or outdoor/rooftop areas for short-term rental sleeping areas;
- Posting clearly printed signs inside the front of the unit that provide information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits and pull fire alarms; and

- Reporting quarterly to the Office of Short-Term Rentals (“OSTR”), the number of nights the residential unit has been rented as a short-term residential rental.

I understand that failure to comply with any of the above listed conditions, in addition to those set forth in the Short-Term Rental Ordinance, will be cause for enforcement action by OSTR, resulting in the accrual of fines and penalties and/or prohibition from the Short-Term Residential Rental Registry.

EXHIBIT C

Administrative Guidance Regarding the Short-Term Rental Application Process: What Happens After An Application Has Been Submitted?

(A) These guidelines are promulgated by the Office of Short-Term Rentals for the City and County of San Francisco (“OSTR”) pursuant to S.F. Administrative Code Section 41A.7(a). OSTR may update these Guidelines from time to time, including as necessary and appropriate to conform to any future amendments to Article 41A.

(B) If OSTR determines that a Short-Term Rental Application meets the criteria to obtain a Short-Term Rental Registration Number, the Residential Unit will be added to the Short-Term Residential Rental Registry. OSTR will send a Short-Term Residential Rental certificate, which contains the assigned Registration Number, to the applicant by United States mail. OSTR will also send a copy of the Short-Term Residential Rental certificate to the applicant by email, if the applicant has provided an email address to OSTR.

(C) If OSTR determines that a Short-Term Rental Application does not meet the criteria to obtain a Short-Term Rental Registration Number, OSTR shall notify the applicant in writing of the fact and basis for the determination of ineligibility (“Rejection Notice”). OSTR will send the Rejection Notice to the applicant by United States mail. OSTR will also send a copy of the Rejection Notice to the applicant by email, if the applicant has provided an email address to OSTR.

(D) The Rejection Notice shall inform the applicant of the right to submit a written appeal of the OSTR’s determination and the procedure for submitting such an appeal.

(E) A person receiving a Rejection Notice may appeal it within thirty (30) calendar days from the date the document is sent.

- 1) The appeal must: (a) be in writing and specify, in detail, the basis for the appeal; and (b) include any additional documentation, including affidavits, relating to the OSTR’s determination that the applicant would like OSTR to consider in connection with the appeal.
- 2) The appeal may be submitted to OSTR: (a) in person at 1650 Mission Street, Suite 400 (Counter in the Planning Department Office); (b) via email to the following address: Kevin.guy@sfgov.org; or (c) via United States mail sent to

EXHIBIT C

the following address: Office of Short-Term Rentals, Attn: Kevin Guy, 1640 Mission Street, Suite 400, San Francisco, CA, 94103.

- (F) If a host fails to submit an appeal within the prescribed time, the OSTR's determination shall be final.
- (G) Any appeal will be considered by an OSTR employee other than the employee who was primarily responsible for the initial investigation and determination.
- (H) The applicant shall have the burden of proving by a preponderance of the evidence that the basis for the Rejection Notice is incorrect.
- (I) Within thirty (30) calendar days of the submission of the appeal, OSTR shall either affirm or reverse its determination based upon the evidence presented. OSTR shall notify the applicant in writing of its determination. OSTR's determination shall be final upon issuance.
- (J) The sole means of review of the OSTR's determination on appeal shall be by filing in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of Civil Procedure.

EXHIBIT D

Material Changes within Meaning of Section 1.11(B) of Agreement

- Any change materially altering HomeAway's obligations under San Francisco law and/or this settlement agreement.
- Any change materially altering the parties' agreed-upon pass-through registration system, including its availability, scope, and functionality.
- Any change materially altering applicants' registration and renewal requirements with respect to short-term rentals.
- Any change materially affecting the ability of applicants to do short-term rentals under San Francisco law (hosted or unhosted).
- Any change materially altering the rights and procedures applicable to applicants' ability to appeal any OSTR decisions regarding applicants' registration for or renewal of OSTR registrations.