

## STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING

### FOR MEDIA BUYS ONE YEAR OR LESS

*(Direct Advertiser Buys)*

Last Updated: 8/14/18

These Standard Terms and Conditions are based upon the IAB/AAAA Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 3.0, modified to cover purchases of Internet advertising made directly by an Advertiser from Expedia Media Solutions. This document, when incorporated into an insertion order, represents the parties' common understanding for doing business. This document may not fully cover sponsorships and other arrangements involving content association or integration, and/or special production, but may be used as the basis for the media components of such contracts. This document is not meant to cover the relationship between Expedia Media Solutions and a network or Expedia Media Solutions and an advertising agency.

#### **DEFINITIONS**

**"Ad"** means any advertisement provided by Advertiser.

**"Advertiser"** means the advertiser under an applicable IO.

**"Advertising Materials"** means artwork, copy, or active URLs for Ads.

**"Affiliate"** means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity.

**"CPA Deliverables"** means Deliverables sold on a cost per acquisition basis.

**"CPC Deliverables"** means Deliverables sold on a cost per click basis.

**"CPL Deliverables"** means Deliverables sold on a cost per lead basis.

**"CPM Deliverables"** means Deliverables sold on a cost per thousand impression basis.

**"Deliverable"** or **"Deliverables"** means the inventory delivered by Expedia Media Solutions (e.g., impressions, clicks, or other desired actions).

**"Expedia Media Solutions Properties"** are websites specified on an IO that are owned, operated, or controlled by Expedia Media Solutions.

**"IO"** means a mutually agreed insertion order that incorporates these Terms, under which Expedia Media Solutions will deliver Ads on Sites for the benefit of Advertiser.

**"Network Properties"** means websites specified on an IO that are not owned, operated, or controlled by Expedia Media Solutions, but on which Expedia Media Solutions has a contractual right to serve Ads.

**"Policies"** means advertising criteria or specifications made conspicuously available, including content limitations, technical specifications, privacy policies, user experience policies, policies regarding

consistency with Expedia Media Solutions' public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and Advertising Materials due dates.

**"Representative"** means, as to an entity and/or its Affiliate(s), any director, officer, employee, consultant, contractor, agent, and/or attorney.

**"Site" or "Sites"** means Expedia Media Solutions Properties and Network Properties.

**"Terms"** means these Standard Terms and Conditions based upon the Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 3.0, modified to cover purchases of Internet advertising made directly by an Advertiser from Expedia Media Solutions.

**"Third Party"** means an entity or person that is not a party to an IO; for purposes of clarity, Expedia Media Solutions, Advertiser, and any Affiliates or Representatives of the foregoing are not Third Parties.

**"Third Party Ad Server"** means a Third Party that will serve and/or track Ads.

## **I. INSERTION ORDERS AND INVENTORY AVAILABILITY**

a. IO Details. From time to time, Expedia Media Solutions and Advertiser may execute IOs that will be accepted as set forth in Section I(b). As applicable, each IO will specify: (i) the type(s) and amount(s) of Deliverables, (ii) the price(s) for such Deliverables, (iii) the maximum amount of money to be spent pursuant to the IO, (iv) the start and end dates of the campaign, and (v) the identity of and contact information for any Third Party Ad Server. Other items that may be included are, but are not limited to, reporting requirements, any special Ad delivery scheduling and/or Ad placement requirements, and specifications concerning ownership of data collected.

b. Availability; Acceptance. Expedia Media Solutions will make commercially reasonable efforts to provide the inventory exactly as provided in the IO. If the specified inventory is not available, Expedia Media Solutions will substitute with comparable inventory for the same overall total value. Acceptance of the IO and these Terms will be deemed the earlier of (i) written (which, unless otherwise specified, for purposes of these Terms, will include paper, fax, or e-mail communication) approval of the IO by Expedia Media Solutions and Advertiser, or (ii) the display of the first Ad impression by Expedia Media Solutions, unless otherwise agreed on the IO. Notwithstanding the foregoing, modifications to the originally submitted IO that change the overall total value will not be binding unless approved in writing by both Expedia Media Solutions and Advertiser.

## **II. AD PLACEMENT AND POSITIONING**

a. Compliance with IO. Expedia Media Solutions will comply with the IO, including all Ad placement restrictions, and, except as set forth in Section VI(c), will create a reasonably balanced delivery schedule.

Expedia Media Solutions will provide, within the scope of the IO, an Ad to the Site specified on the IO when such Site is visited by an Internet user. Any exceptions will be approved by Advertiser in writing.

b. Changes to Site. Expedia Media Solutions will use commercially reasonable efforts to provide Advertiser at least 10 business days prior notification of any material changes to the Site that would materially change the target audience or materially affect the size or placement of the Ad specified on the applicable IO. Should such a modification occur with or without notice, as Advertiser's sole remedy for such change, Advertiser may cancel the remainder of the affected placement without penalty within the 10-day notice period. If Expedia Media Solutions has failed to provide such notification, Advertiser may cancel the remainder of the affected placement within 30 days of such modification and, in such case, will not be charged for any affected Ads delivered after such modification.

c. Technical Specifications. Expedia Media Solutions will submit or otherwise make electronically accessible to Advertiser final technical specifications within two (2) business days of the acceptance of an IO. Changes by Expedia Media Solutions to the specifications of already-purchased Ads after that two (2) business day period will allow Advertiser to suspend delivery of the affected Ad for a reasonable time (without impacting the end date, unless otherwise agreed by the parties) in order to (i) send revised Advertising Materials; (ii) request that Expedia Media Solutions resize the Ad at Expedia Media Solutions' cost, and with final creative approval of Advertiser, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within five (5) business days, immediately cancel the remainder of the affected placement without penalty.

d. Editorial Adjacencies. Expedia Media Solutions acknowledges that certain Advertisers may not want their Ads placed adjacent to content that promotes pornography, violence, or the use of firearms, contains obscene language, or falls within another category stated on the IO ("**Editorial Adjacency Guidelines**"). Expedia Media Solutions will use commercially reasonable efforts to comply with the Editorial Adjacency Guidelines with respect to Ads that appear on Expedia Media Solutions Properties, although Expedia Media Solutions will at all times retain editorial control over the Expedia Media Solutions Properties. For Ads shown on Network Properties, Expedia Media Solutions and Advertiser agree that Expedia Media Solutions' sole responsibilities with respect to compliance with these Editorial Adjacency Guidelines will be to obtain contractual representations from its participating network publishers that such publishers will comply with Editorial Adjacency Guidelines on all Network Properties and to provide the remedy specified below to Advertiser with respect to violations of Editorial Adjacency Guidelines on Network Properties. Should Ads appear in violation of the Editorial Adjacency Guidelines, Advertiser's sole and exclusive remedy is to request in writing that Expedia Media Solutions remove the Ads and provide makegoods or, if no makegood can be agreed upon, issue a credit to Advertiser equal to the value of such Ads. In cases where a makegood and a credit can be shown to be commercially infeasible for the Advertiser, Advertiser and Expedia Media Solutions will negotiate an alternate solution. After Advertiser notifies Expedia Media Solutions that specific Ads are in violation of the Editorial Adjacency Guidelines, Expedia Media Solutions will make commercially reasonable efforts to correct such violation within 24 hours. If such correction materially and adversely impacts such IO, Advertiser and Expedia Media Solutions will negotiate in good faith mutually agreed changes to such IO

to address such impacts. Notwithstanding the foregoing, Advertiser acknowledges and agrees that Advertiser will not be entitled to any remedy for any violation of the Editorial Adjacency Guidelines resulting from: (i) Ads placed at locations other than the Sites, or (ii) Ads displayed on properties that Advertiser is aware, or should be aware, may contain content in potential violation of the Editorial Adjacency Guidelines.

For any page on the Site that primarily consists of user-generated content, the preceding paragraph will not apply. Instead, Expedia Media Solutions will make commercially reasonable efforts to ensure that Ads are not placed adjacent to content that violates the Site's terms of use. Advertiser's sole remedy for Expedia Media Solutions' breach of such obligation will be to submit written complaints to Expedia Media Solutions, which will review such complaints and remove user-generated content that Expedia Media Solutions, in its sole discretion, determines is objectionable or in violation of such Site's terms of use.

### **III. PAYMENT AND PAYMENT LIABILITY**

a. Invoices. The initial invoice will be sent by Expedia Media Solutions upon completion of the first month's delivery, or within 30 days of completion of the IO, whichever is earlier. Invoices will be sent to Advertiser's billing address as set forth on the IO and will include information reasonably specified by Advertiser, such as the IO number, Advertiser name, brand name or campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices (other than corrections of previously provided invoices) pursuant to the IO will be sent within 90 days of delivery of all Deliverables.

Upon request from Advertiser, Expedia Media Solutions will provide proof of performance for the invoiced period, which may include access to online or electronic reporting, as addressed in these Terms, subject to the notice and cure provisions of Section IV. Expedia Media Solutions will invoice Advertiser for the services provided on a calendar-month basis based on actual delivery, flat-fee, or based on prorated distribution of delivery over the term of the IO, as specified on the applicable IO.

b. Payment Date. Advertiser will make payment 30 days from its receipt of invoice, or as otherwise stated in a payment schedule set forth on the IO.

If Advertiser's credit is or becomes impaired, Expedia Media Solutions may require payment in advance.

### **IV. REPORTING**

a. Confirmation of Campaign Initiation. Expedia Media Solutions will, within two (2) business days of the start date on the IO, provide confirmation to Advertiser, either electronically or in writing, stating whether the components of the IO have begun delivery.

b. Expedia Media Solutions Reporting. If Expedia Media Solutions is serving the campaign, Expedia Media Solutions will make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified on the IO. Reports will be broken out by day and summarized by

creative execution, content area (Ad placement), impressions, clicks, spend/cost, and other variables as may be defined on the IO (e.g., keywords).

Once Expedia Media Solutions has provided the online or electronic report, it agrees that Advertiser is entitled to reasonably rely on it, subject to provision of Expedia Media Solutions' invoice for such period.

c. Makegoods for Reporting Failure. If Expedia Media Solutions fails to deliver an accurate and complete report by the time specified, Advertiser may initiate makegood discussions pursuant to Section VI, below.

If Advertiser informs Expedia Media Solutions that Expedia Media Solutions has delivered an incomplete or inaccurate report, or no report at all, Expedia Media Solutions will cure such failure within five (5) business days of receipt of such notice. Failure to cure may result in nonpayment for all activity for which data is incomplete or missing until Expedia Media Solutions delivers reasonable evidence of performance; such report will be delivered within 30 days of Expedia Media Solutions' knowledge of such failure or, absent such knowledge, within 180 days of delivery of all Deliverables.

## **V. CANCELLATION AND TERMINATION**

a. Without Cause by Advertiser. Unless designated on the IO as non-cancelable, Advertiser may cancel the entire IO, or any portion thereof, as follows:

i. With 14 days' prior written notice to Expedia Media Solutions, without penalty, for any guaranteed Deliverable, including, but not limited to, CPM Deliverables. For clarity and by way of example, if Advertiser cancels the guaranteed portions of the IO eight (8) days prior to serving of the first impression, Advertiser will only be responsible for the first six (6) days of those Deliverables.

ii. . With seven (7) days' prior written notice to Expedia Media Solutions, without penalty, for any non-guaranteed Deliverable, including, but not limited to, CPC Deliverables, CPL Deliverables, or CPA Deliverables, as well as some non-guaranteed CPM Deliverables.

iii. With 30 days' prior written notice to Expedia Media Solutions, without penalty, for any flat fee-based or fixed-placement Deliverable, including, but not limited to, roadblocks, time-based or share-of-voice buys, and some types of cancelable sponsorships.

iv. Advertiser will remain liable to Expedia Media Solutions for amounts due for any custom content or development ("**Custom Material**") provided to Advertiser or completed by Expedia Media Solutions or its third-party vendor prior to the effective date of termination. For IOs that contemplate the provision or creation of Custom Material, Expedia Media Solutions will specify the amounts due for such Custom Material as a separate line item. Advertiser will pay for such Custom Material within 30 days from receiving an invoice therefore.

b. Without Cause by Publisher. Unless designated on the IO as non-cancelable, the Publisher may cancel the entire IO, or any portion thereof, as follows:

i. With fourteen (14) days' prior written notice to Advertiser, without penalty, for any guaranteed Deliverable, including, but not limited to, CPM Deliverables.

ii. With seven (7) days' prior written notice to Advertiser, without penalty, for any non-guaranteed Deliverable, including, but not limited to, CPC Deliverables, CPL Deliverables, or CPA Deliverables, as well as some non-guaranteed CPM Deliverables.

iii. With 30 days' prior written notice to Advertiser, without penalty, for any flat fee-based or fixed-placement Deliverable, including, but not limited to, roadblocks, time-based or share-of-voice buys, and some types of cancellable sponsorships.

c. For Cause. Either Expedia Media Solutions or Advertiser may terminate an IO at any time if the other party is in material breach of its obligations hereunder, which breach is not cured within 10 days after receipt of written notice thereof from the non-breaching party, except as otherwise stated in these Terms with regard to specific breaches. Additionally, if Advertiser breaches its obligations by violating the same Policy three times (and such Policy was provided to Advertiser) and receives timely notice of each such breach, even if Advertiser cures such breaches, then Expedia Media Solutions may terminate the IO or placements associated with such breach upon written notice. If Advertiser does not cure a violation of a Policy within the applicable 10-day cure period after written notice, where such Policy had been provided by Expedia Media Solutions to Advertiser, then Expedia Media Solutions may terminate the IO and/or placements associated with such breach upon written notice.

d. Short Rates. Short rates will apply to cancelled buys to the degree stated on the IO.

## **VI. MAKEGOODS**

a. Notification of Under-delivery. Expedia Media Solutions will monitor delivery of the Ads, and will notify Advertiser either electronically or in writing as soon as possible (and no later than 7 days before the applicable IO end date unless the length of the campaign is less than 7 days) if Expedia Media Solutions believes that an under-delivery is likely, and there is no other comparable inventory available. In the case of an actual under-delivery, Advertiser and Expedia Media Solutions may arrange for a makegood consistent with these Terms.

b. Makegood Procedure. If actual Deliverables for any campaign fall below guaranteed levels, as set forth on the IO, and/or if there is an omission of any Ad (placement or creative unit), Advertiser and Expedia Media Solutions will use commercially reasonable efforts to agree upon the conditions of a makegood flight. If no makegood can be agreed upon, Advertiser may execute a credit equal to the value of the under-delivered portion of the IO for which it was charged. If Advertiser has made a cash prepayment to Expedia Media Solutions, specifically for the campaign IO for which under-delivery applies, then, if Advertiser is reasonably current on all amounts owed to Expedia Media Solutions under any other agreement for such Advertiser, Advertiser may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event will Expedia Media Solutions provide a makegood or extend any Ad beyond the period set forth on the IO without the prior written consent of Advertiser, which can be via an exchange of email.

c. Unguaranteed Deliverables. If an IO contains CPA Deliverables, CPL Deliverables, or CPC Deliverables, the predictability, forecasting, and conversions for such Deliverables may vary and guaranteed delivery, even delivery, and makegoods are not available.

## **VII. BONUS IMPRESSIONS**

a. With Third Party Ad Server. Where Advertiser uses a Third Party Ad Server, Expedia Media Solutions will not bonus more than 10% above the Deliverables specified on the IO without the prior written consent of Advertiser. Permanent or exclusive placements will run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad Server activity. Advertiser will not be charged by Expedia Media Solutions for any additional Deliverables above any level guaranteed or capped on the IO. If a Third Party Ad Server is being used and Advertiser notifies Expedia Media Solutions that the guaranteed or capped levels stated on the IO have been reached,

Expedia Media Solutions will use commercially reasonable efforts to suspend delivery and, within 48 hours of receiving such notice, Expedia Media Solutions may either (i) serve any additional Ads itself or (ii) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser but only (A) after such notice has been provided, and (B) to the extent such charges are associated with overdelivery by more than 10% above such guaranteed or capped levels.

b. No Third Party Ad Server. Where Advertiser does not use a Third Party Ad Server, Expedia Media Solutions may bonus as many ad units as Expedia Media Solutions chooses unless otherwise indicated on the IO. Advertiser will not be charged by Expedia Media Solutions for any additional Deliverables above any level guaranteed on the IO.

## **VIII. FORCE MAJEURE**

a. Generally. Excluding payment obligations, neither Advertiser nor Expedia Media Solutions will be liable for delay or default in the performance of its respective obligations under these Terms if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes (“**Force Majeure event**”). If Expedia Media Solutions suffers such a delay or default, Expedia Media Solutions will make reasonable efforts within five (5) business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to Advertiser, Expedia Media Solutions will allow Advertiser a pro rata reduction in the space, time, and/or program charges hereunder in the amount of money assigned to the space, time, and/or program charges at time of purchase. In addition, Advertiser will have the benefit of the same discounts that would have been earned had there been no default or delay.

b. Related to Payment. If Advertiser’s ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Advertiser’s reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Advertiser will make every reasonable effort to make payments on a timely basis to Expedia Media Solutions, but any delays caused by such condition will be excused for the duration of such condition. Subject to the foregoing, such excuse for delay will not in any way relieve Advertiser from any of its obligations as to the amount of money that would have been due and paid without such condition.

c. Cancellation. If a Force Majeure event has continued for five (5) business days, Expedia Media Solutions and/or Advertiser has the right to cancel the remainder of the IO without penalty.

## **IX. AD MATERIALS**

a. Submission. Advertiser will submit Advertising Materials pursuant to Section II(c) in accordance with Expedia Media Solutions’ then-existing Policies. Expedia Media Solutions’ sole remedies for a breach of this provision are set forth in Section V(c), above, Sections IX (c) and (d), below, and Sections X (b), below.



b. Late Creative. If Advertising Materials are not received by the IO start date, Expedia Media Solutions will begin to charge the Advertiser on the IO start date on a pro rata basis based on the full IO, excluding portions consisting of performance-based, non-guaranteed inventory, for each full day the Advertising Materials are not received. If Advertising Materials are late based on the Policies, Expedia Media Solutions is not required to guarantee full delivery of the IO. Expedia Media Solutions and Advertiser will negotiate a resolution if Expedia Media Solutions has received all required Advertising Materials in accordance with Section IX(a) but fails to commence a campaign on the IO start date.

c. Compliance. Expedia Media Solutions reserves the right within its discretion to reject or remove from its Site any Ads for which the Advertising Materials, software code associated with the Advertising Materials (e.g. pixels, tags, JavaScript), or the website to which the Ad is linked do not comply with its Policies, or that in Expedia Media Solutions' sole reasonable judgment, do not comply with any applicable law, regulation, or other judicial or administrative order. In addition, Expedia Media Solutions reserves the right within its discretion to reject or remove from its Site any Ads for which the Advertising Materials or the website to which the Ad is linked are, or may tend to bring, disparagement, ridicule, or scorn upon Expedia Media Solutions or any of its Affiliates (as defined below), provided that if Expedia Media Solutions has reviewed and approved such Ads prior to their use on the Site, Expedia Media Solutions will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Advertiser.

d. Damaged Creative. If Advertising Materials provided by Advertiser are damaged, not to Expedia Media Solutions' specifications, or otherwise unacceptable, Expedia Media Solutions will use commercially reasonable efforts to notify Advertiser within two (2) business days of its receipt of such Advertising Materials.

e. No Modification. Expedia Media Solutions will not edit or modify the submitted Ads in any way, including, but not limited to, resizing the Ad, without Advertiser's approval. Expedia Media Solutions will use all Ads in strict compliance with these Terms and any written instructions provided on the IO.

f. Ad Tags. When applicable, Third Party Ad Server tags will be implemented so that they are functional in all aspects.

g. Trademark Usage. Expedia Media Solutions, on the one hand, and Advertiser, on the other, will not use the other's trade name, trademarks, logos, or Ads in any public announcement (including, but not limited to, in any press release) regarding the existence or content of these Terms or an IO without the other's prior written approval.

## **X. INDEMNIFICATION**

a. By Expedia Media Solutions. Expedia Media Solutions will defend, indemnify, and hold harmless Advertiser, and each of its Affiliates and Representatives from damages, liabilities, costs, and expenses (including reasonable attorneys' fees) (collectively, "**Losses**") resulting from any claim, judgment, or proceeding (collectively, "**Claims**") brought by a Third Party and resulting from (i) Expedia Media Solutions' alleged breach of Section XII or of Expedia Media Solutions' representations and warranties in

Section XIV(a), (ii) Expedia Media Solutions' display or delivery of any Ad in breach of Section II(a) or Section IX(e), or (iii) Advertising Materials provided by Expedia Media Solutions for an Ad (and not by Advertiser, and/or each of its Affiliates and/or Representatives) ("**Expedia Media Solutions Advertising Materials**") that: (A) violate any applicable law, regulation, judicial or administrative action, or the right of a Third Party; or (B) are defamatory or obscene. Notwithstanding the foregoing, Expedia Media Solutions will not be liable for any Losses resulting from Claims to the extent that such Claims result from (1) Expedia Media Solutions' customization of Ads or Advertising Materials based upon detailed specifications, materials, or information provided by the Advertiser and/or each of its Affiliates and/or Representatives, or (2) a user viewing an Ad outside of the targeting set forth on the IO, which viewing is not directly attributable to Expedia Media Solutions' serving such Ad in breach of such targeting.

b. By Advertiser. Advertiser will defend, indemnify, and hold harmless Expedia Media Solutions and each of its Affiliates and Representatives from Losses resulting from any Claims brought by a Third Party resulting from (i) Advertiser's alleged breach of Section XII or of Advertiser's representations and warranties in Section XIV(a), (ii) Advertiser's violation of Policies (to the extent the terms of such Policies have been provided (e.g., by making such Policies available by providing a URL) via email or other affirmative means, to Advertiser at least 14 days prior to the violation giving rise to the Claim), or (iii) the content or subject matter of any Ad or Advertising Materials to the extent used by Expedia Media Solutions in accordance with these Terms or an IO.

c. Procedure. The indemnified party(s) will promptly notify the indemnifying party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying party's obligations except to the extent such party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying party at the indemnifying party's expense in connection with the defense or settlement of all Claims; and (ii) be entitled to participate at its own expense in the defense of all Claims. The indemnified party(s) agrees that the indemnifying party will have sole and exclusive control over the defense and settlement of all Claims; provided, however, the indemnifying party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on an indemnified party(s) without its prior written consent.

## **XI. LIMITATION OF LIABILITY**

Excluding Advertiser's, and Expedia Media Solutions' respective obligations under Section X, damages that result from a breach of Section XII, or intentional misconduct by Advertiser or Expedia Media Solutions, in no event will any party be liable for any consequential, indirect, incidental, punitive, special, or exemplary damages whatsoever, including, but not limited to, damages for loss of profits, business interruption, loss of information, and the like, incurred by another party arising out of an IO, even if such party has been advised of the possibility of such damages.

## **XII: NON-DISCLOSURE, DATA USAGE AND OWNERSHIP, PRIVACY AND LAWS**

a. Definitions and Obligations. "**Confidential Information**" will include (i) all information marked as "Confidential," "Proprietary," or similar legend by the disclosing party ("**Discloser**") when given to the receiving party ("**Recipient**"); and (ii) information and data provided by the Discloser, which under the

circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary. Without limiting the foregoing, Discloser and Recipient agree that each Discloser's contribution to IO Details (as defined below) shall be considered such Discloser's Confidential Information. Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care. Recipient shall not disclose Confidential Information to anyone except an employee, agent, Affiliate, or third party who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this section. Recipient will not use Discloser's Confidential Information other than as provided for on the IO.

b. Exceptions. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" will not include information which: (i) was previously known to Recipient; (ii) was or becomes generally available to the public through no fault of Recipient; (iii) was rightfully in Recipient's possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser; (iv) was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as necessary to establish the rights of either party under these Terms; provided, however, that both Discloser and Recipient will stipulate to any orders necessary to protect such information from public disclosure.

c. Additional Definitions. As used herein the following terms shall have the following definitions:

i. **"User Volunteered Data"** is personally identifiable information collected from individual users by Expedia Media Solutions during delivery of an Ad pursuant to the IO, but only where it is expressly disclosed to such individual users that such collection is solely on behalf of Advertiser.

ii. **"IO Details"** are details set forth on the IO but only when expressly associated with the applicable Discloser, including, but not limited to, Ad pricing information, Ad description, Ad placement information, and Ad targeting information.

iii. **"Performance Data"** is data regarding a campaign gathered during delivery of an Ad pursuant to the IO (e.g., number of impressions, interactions, and header information), but excluding Site Data or IO Details.

iv. **"Site Data"** is any data that is (A) preexisting Expedia Media Solutions data used by Expedia Media Solutions pursuant to the IO; (B) gathered pursuant to the IO during delivery of an Ad that identifies or allows identification of Expedia Media Solutions, Expedia Media Solutions' Site, brand, content, context, or users as such; or (C) entered by users on any Expedia Media Solutions Site other than User Volunteered Data.

v. **"Collected Data"** consists of IO Details, Performance Data, and Site Data.

vi. **“Repurposing”** means retargeting a user or appending data to a non-public profile regarding a user for purposes other than performance of the IO.

vii. **“Aggregated”** means a form in which data gathered under an IO is combined with data from numerous campaigns of numerous Advertisers and precludes identification, directly or indirectly, of an Advertiser.

d. Use of Collected Data.

i. Unless otherwise authorized by Expedia Media Solutions, Advertiser will not: (A) use Collected Data for Repurposing; provided, however, that Performance Data may be used for Repurposing so long as it is not joined with any IO Details or Site Data; (B) disclose IO Details of Expedia Media Solutions or Site Data to any Affiliate or Third Party except as set forth in Section XII(d)(iii).

ii. . Unless otherwise authorized by Advertiser, Expedia Media Solutions will not: (A) use or disclose IO Details of Advertiser, Performance Data, or a user’s recorded view or click of an Ad, each of the foregoing on a non-Aggregated basis, for Repurposing or any purpose other than performing under the IO, compensating data providers in a way that precludes identification of the Advertiser, or internal reporting or internal analysis; or (B) use or disclose any User Volunteered Data in any manner other than in performing under the IO.

iii. Advertiser and Expedia Media Solutions (each a **“Transferring Party”**) will require any Third Party or Affiliate used by the Transferring Party in performance of the IO on behalf of such Transferring Party to be bound by confidentiality and non-use obligations at least as restrictive as those on the Transferring Party, unless otherwise set forth in the IO.

e. User Volunteered Data. All User Volunteered Data is the property of Advertiser, is subject to the Advertiser’s posted privacy policy, and is considered Confidential Information of Advertiser. Any other use of such information will be set forth on the IO and signed by both parties.

f. Privacy Policies. Advertiser and Expedia Media Solutions will post on their respective Web sites their privacy policies and adhere to their privacy policies, which will abide by applicable laws. Failure by Expedia Media Solutions, on the one hand, or Advertiser, on the other, to continue to post a privacy policy, or non-adherence to such privacy policy, is grounds for immediate cancellation of the IO by the other party.

g. Compliance with Law. Advertiser and Expedia Media Solutions will at all times comply with all federal, state, and local laws, ordinances, regulations, and codes which are applicable to their performance of their respective obligations under the IO.

**XIII. THIRD PARTY AD SERVING AND TRACKING (Applicable if Third Party Ad Server is used)**

a. Ad Serving and Tracking. Expedia Media Solutions will track delivery through its ad server and, provided that Expedia Media Solutions has approved in writing a Third Party Ad Server to run on its

properties, Advertiser will track delivery through such Third Party Ad Server. Advertiser may not substitute the specified Third Party Ad Server without Expedia Media Solutions' prior written consent.

b. Controlling Measurement. If both parties are tracking delivery, the measurement used for invoicing advertising fees under an IO ("**Controlling Measurement**") will be determined as follows:

i. Except as specified in Section XIII(b)(iii), the Controlling Measurement will be taken from an ad server that is certified as compliant with the IAB/AAAA Ad Measurement Guidelines (the "**IAB/AAAA Guidelines**").

ii. . If both ad servers are compliant with the IAB/AAAA Guidelines, the Controlling Measurement will be the Third Party Ad Server if such Third Party Ad Server provides an automated, daily reporting interface which allows for automated delivery of relevant and non-proprietary statistics to Expedia Media Solutions in an electronic form that is approved by Expedia Media Solutions; provided, however, that Expedia Media Solutions must receive access to such interface in the timeframe set forth in Section XIII(c), below.

iii. If neither party's ad server is compliant with the IAB/AAAA Guidelines or the requirements in subparagraph (ii), above, cannot be met, the Controlling Measurement will be based on Expedia Media Solutions' ad server, unless otherwise agreed by Advertiser and Expedia Media Solutions in writing.

c. Ad Server Reporting Access. As available, the party responsible for the Controlling Measurement will provide the other party with online or automated access to relevant and non-proprietary statistics from the ad server within one (1) day after campaign launch. The other party will notify the party with Controlling Measurement if such party has not received such access. If such online or automated reporting is not available, the party responsible for the Controlling Measurement will provide placement-level activity reports to the other party in a timely manner, as mutually agreed to by the parties or as specified in Section IV(b), above, in the case of Ads being served by Expedia Media Solutions. If both parties have tracked the campaign from the beginning and the party responsible for the Controlling Measurement fails to provide such access or reports as described herein, then the other party may use or provide its ad server statistics as the basis of calculating campaign delivery for invoicing. Notification may be given that access, such as login credentials or automated reporting functionality integration, applies to all current and future IOs, in which case new access for each IO is not necessary.

d. Discrepant Measurement. If the difference between the Controlling Measurement and the other measurement exceeds 10% over the invoice period and the Controlling Measurement is lower, the parties will facilitate a reconciliation effort between Expedia Media Solutions and Third Party Ad Server measurements. If the discrepancy cannot be resolved and a good faith effort to facilitate the reconciliation has been made, Advertiser reserves the right to either:

i. Consider the discrepancy an under-delivery of the Deliverables as described in Section VI(b), whereupon the parties will act in accordance with that Section, including the requirement that

Advertiser and Expedia Media Solutions make an effort to agree upon the conditions of a makegood flight and delivery of any makegood will be measured by the Third Party Ad Server, or

ii. . Pay invoice based on Controlling Measurement-reported data, plus a 10% upward adjustment to delivery.

e. Measurement Methodology. Expedia Media Solutions will make reasonable efforts to publish, and Advertiser will make reasonable efforts to cause the Third Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regard to compliance with the IAB/AAAA Guidelines.

f. Third Party Ad Server Malfunction. Where Advertiser is using a Third Party Ad Server and that Third Party Ad Server cannot serve the Ad, Advertiser will have a one-time right to temporarily suspend delivery under the IO for a period of up to 72 hours. Upon written notification by Advertiser of a non-functioning Third Party Ad Server, Expedia Media Solutions will have 24 hours to suspend delivery. Following that period, Advertiser will not be held liable for payment for any Ad that runs within the immediately following 72-hour period until Expedia Media Solutions is notified that the Third Party Ad Server is able to serve Ads. After the 72-hour period passes and Advertiser has not provided written notification that Expedia Media Solutions can resume delivery under the IO, Advertiser will pay for the Ads that would have run, or are run, after the 72-hour period but for the suspension, and can elect Expedia Media Solutions to serve Ads until the Third Party Ad Server is able to serve Ads. If Advertiser does not so elect for Expedia Media Solutions to serve the Ads until Third Party Ad Server is able to serve Ads, Expedia Media Solutions may use the inventory that would have been otherwise used for Expedia Media Solutions' own advertisements or advertisements provided by a Third Party.

g. Third Party Ad Server Fixed. Upon notification that the Third Party Ad Server is functioning, Expedia Media Solutions will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in Expedia Media Solutions owing a makegood to Advertiser.

#### **XIV. MISCELLANEOUS**

a. Necessary Rights. Expedia Media Solutions represents and warrants that Expedia Media Solutions has all necessary permits, licenses, and clearances to sell the Deliverables specified on the IO subject to these Terms. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in the Ads and Advertising Materials as specified on the IO and subject to these Terms, including any applicable Policies.

b. Assignment. Advertiser may not resell, assign, or transfer any of its rights or obligations hereunder, and any attempt to resell, assign, or transfer such rights or obligations without Expedia Media Solutions' prior written approval will be null and void. All terms and conditions in these Terms and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors, and assigns.

c. Entire Agreement. Each IO (including the Terms) will constitute the entire agreement of the parties with respect to the subject matter thereof and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document.

d. Conflicts; Governing Law; Amendment. In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO will prevail. All IOs will be governed by the laws of the State of \_\_\_\_\_. Expedia Media Solutions and Advertiser agree that any claims, legal proceedings, or litigation arising in connection with the IO (including these Terms) will be brought solely in \_\_\_\_\_, and the parties consent to the jurisdiction of such courts. No modification of these Terms will be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.

e. Notice. Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Expedia Media Solutions and Advertiser will be sent to the contact as noted on the IO with a copy to the Legal Department. All notices to Advertiser will be sent to the address specified on the IO.

f. Survival. Sections III, VI, X, XI, XII, and XIV will survive termination or expiration of these Terms, and Section IV will survive for 30 days after the termination or expiration of these Terms. In addition, each party will promptly return or destroy the other party's Confidential Information upon written request and remove Advertising Materials and Ad tags upon termination of these Terms.

g. Headings. Section or paragraph headings used in these Terms are for reference purposes only, and should not be used in the interpretation hereof.