

## ENGAGE MASTER SERVICES AGREEMENT

### 1. DEFINITIONS.

- 1.1. **"Ads.txt"** means an authorized digital seller's text file. All references to Ads.txt include App-ads.txt.
- 1.2. **"Advertiser Recs"** means Recommendations (that are not Recirculation Recs) in the Outbrain network submitted by Outbrains advertisers.
- 1.3. **"Content"** means graphical, textual, and/or auditory content (which may include text, data, information, photos, images, graphics, audio, video or other content).
- 1.4. **"Data"** means all data collected or generated pursuant to an SOW including any reports or other data made available to Partner from time to time in connection with the Agreement.
- 1.5. **"End Users"** means individual human viewers of a web page, application and/or platform of the Partner Sites.
- 1.6. **"Intellectual Property Rights"** includes any invention, discovery, concept, expression or work, whether or not patented or patentable, registered or not, including, without limitation, discoveries, compositions, know-how, procedures, technical information, processes, methods, formulas, algorithms, protocols, techniques, designs and drawings, trade dresses, any physical embodiment thereof, and any patents, copyrights, trademarks, industrial designs and utility models, (and applications or extensions therefore), domains and trade secrets or similar rights to aforementioned rights recognized in any jurisdiction now or in the future.
- 1.7. **"OB Generated Links"** means an End User page view on a Partner Site generated from a referral link of OBNews.Outbrain.com (or successor link or an additional link(s) which may be provided by Outbrain from time to time).
- 1.8. **"Partner Sites"** means the web properties, applications or platforms identified in the SOW, together with any additional properties on which Partner elects to implement the Technology upon prior written approval from Outbrain (e-mail will suffice).
- 1.9. **"Recirculation Recs"** means Recommendations (that are not Advertiser Recs) which link to Content on Partner Sites.
- 1.10. **"Recommendations"** means the display of Advertiser Recs and/or Recirculation Recs that Outbrain delivers to End Users of a web page, application or platform.
- 1.11. **"Technology"** means, Outbrain's Javascript, API, SDK, the Outbrain Video Player (as applicable) and associated protocols provided by Outbrain to Partner.
- 1.12. **"Updates"** means updates, modifications, or improvements to the Technology from time to time in Outbrain's sole discretion, including, but not limited to, adding Ads.txt lines and any other similar industry standards.

### 2. TECHNOLOGY; PLACEMENT AND APPEARANCE.

- 2.1. Partner shall, if required by an applicable SOW, implement the Technology (including Outbrain's provided Ads.txt) pursuant to Outbrain's technical instructions and any implementation guides made available by Outbrain, as revised from time to time. Outbrain, in its sole discretion, may determine which of Outbrain's available Technology (e.g. JS, API, SDK, the Outbrain Video Player or any other equivalent) shall be used in each Partner implementation. Implementation which includes Recommendations must: (a) appear directly below the main Content on each page of the Partner Sites; or (b) include at least one (1) link to Advertiser Recs per page unless otherwise agreed in writing.
- 2.2. Partner shall display the Technology throughout the Term in accordance with all self-regulatory codes and applicable laws and regulations, including with respect to disclosing the source or nature of the Recommendations. Without limiting the foregoing obligation, Partner

agrees to comply with Outbrain's reasonable instructions regarding how the Technology is to be displayed, labelled or identified.

2.3. Outbrain may make Updates from time to time. If Outbrain requests Partner to implement any such Updates, Partner shall make such Updates within thirty (30) calendar days of receipt of notice from Outbrain. If Partner can demonstrate such Updates would materially and adversely affect the performance of the Partner Sites, Outbrain may either address Partner's concerns to its reasonable satisfaction or agree not to require Partner to implement such Updates.

2.4. Where applicable, Outbrain may drive End Users to Partner Sites generating additional Partner Site page views via OB Generated Links or Recirculation Recs. If an End User clicks on an Advertiser Rec from an OB Generated Link, Partner shall not be compensated for any advertising revenue generated by such page views. Any display of Recirculation Recs will require Outbrain's prior written approval (email will suffice), which may be conditioned on a minimum Advertiser Rec implementation or other fees.

2.5. Outbrain may test changes to the Technology from time to time. To the extent that Partner controls any testing, Partner shall comply with such testing requests on at least a quarterly basis.

### 3. **REVENUE & PAYMENT.**

3.1. During the Term, Partner and/or Outbrain (as applicable) will be paid in accordance with the payment terms and fees indicated in the applicable SOW.

3.2. Where payment is being made to Partner pursuant to an applicable SOW, Partner must promptly provide Outbrain completed and accurate tax forms and all other similar materials Outbrain requires, which may include tax form W-8BEN, W-8BEN-E or W-9 if applicable (collectively all such forms and materials, "**Tax Materials**"). Notwithstanding anything set forth to the contrary in this Agreement, Outbrain may (a) withhold payments owed to Partner hereunder without penalty or late fee until Outbrain has received Partner's Tax Materials; and (b) deduct any applicable taxes payable by Outbrain from payments owed to Partner hereunder as required by law. Once Outbrain has received the Tax Materials, Outbrain will use commercially reasonable efforts to pay any amounts not paid to Partner pursuant to the foregoing subsection (a) as soon as reasonably practicable.

3.3. To ensure proper payment to Partner, Partner is responsible for notifying Outbrain in writing of accurate contact and payment information. Partner is also responsible for any charges assessed by Partner's bank or payment provider. If the amount owed to Partner is less than US\$50, then the amount owed will be accrued if and until the calendar month in which the balance of the payments due to Partner exceeds US\$50. All payments under this Agreement will be in accordance with Outbrain's measurements. Any dispute regarding a payment from Outbrain must be submitted to Outbrain in writing within thirty (30) calendar days of postage or wire transfer date of such payment or it shall be deemed waived.

3.4. In addition to Outbrain's other rights and remedies, Outbrain may (i) withhold and offset any payments owed to Partner under the Agreement (including in case of a material breach) against any fees Partner owes Outbrain under the Agreement or any other agreement) or if Partner is in breach of the terms of this Agreement, and/or (ii) require Partner to refund Outbrain within thirty (30) calendar days of any invoice, any amounts Outbrain may have overpaid to Partner in prior periods. If an Outbrain advertiser, client or partner defaults on payment to Outbrain, for any reason, Outbrain may withhold payment or charge back Partner's account.

### 4. **PRIVACY.**

The provisions of the [Engage Data Sharing Agreement](#) shall be fully incorporated into, and form part of, this Agreement.

### 5. **LICENSE TERMS.**

5.1. During the Term and subject to Partner's compliance with all of the terms of the Agreement, Outbrain grants Partner, during the Term, a limited, worldwide, non-exclusive, royalty-free licence to use and display Outbrain's trademarks, service marks and logos (collectively, "**Outbrain Marks**"), as incorporated into the Technology, strictly in accordance with Partner's obligations and rights in the Agreement. All goodwill arising out of Partner's use of any of the Outbrain Marks shall inure solely to the benefit of Outbrain. Outbrain shall have the right to refer to Partner and the Partner Sites in any general listing of advertisers or partners (including in marketing and sales materials) who have implemented the Technology. Notwithstanding the foregoing, each party will request prior written consent before issuing a press release regarding the Agreement or using the other party's name on its website other than in accordance with the Agreement.

5.2. As between the parties: (a) Outbrain retains all right, title and interest in and to the Outbrain Marks, Technology and Data (excluding any Content from the Partner Sites which shall be owned by Partner), the Outbrain site at [www.outbrain.com](http://www.outbrain.com) and the Dashboard; and (b) Partner retains all right, title and interest in and to the Partner Sites including the look and feel excluding the items described in subsection (a) above. The licenses granted under the Agreement are specifically set forth in the Agreement; there are no implied rights. All rights not expressly granted to Partner in the Agreement are reserved by Outbrain.

5.3. **PROHIBITED ACTIONS.** Partner agrees that it will not, either by itself or by authorizing or encouraging others to do so, directly or indirectly: (a) use, post or promote any Recommendations in association with any material or content which is, or which may reasonably be considered illegal, unlawful or infringing under any applicable laws (including, without limitation, content which infringes a third party copyright (i.e. illegal streaming website) or in breach of [Outbrain's Publisher Guidelines](#) (as amended from time to time) (b) modify, change, edit, amend, truncate, alter, bypass or reorder any aspect of the Technology or Recommendations; (c) take any action that might impede Outbrain's provision of the Technology or the Recommendations; (d) generate clicks on Recommendations, or generate page views, that Outbrain believes, in its sole discretion, is through any automated, deceptive, fraudulent or other means that is designed to generate clicks or page views that are not the willing actions of human end users who possess an independent, genuine desire to engage with the content that appears on the relevant page(s), including but not limited to, through (i) repeated manual clicks, use of robots or other automated tools or computer generated requests, (ii) participation in pay-per-click programs, (iii) redirection of search requests to pages that do not contain content reasonably relevant to the search query; (e) copy, crawl, index, cache or store any information derived by Outbrain, or contained in or concerning a Recommendation; (f) in any way minimize or obstruct the display of any Recommendations; or (g) commit fraudulent passing off, including but not limited to spoofing the unique identifier of the ad spot which could be a URL or an app name. Section (d) of the previous sentence shall be deemed to have been violated (x) if traffic is not converting above a certain threshold as determined by Outbrain in its sole discretion or if Partner's Sites result in low post-click performance, or (y) by any page view that Outbrain determines, in its sole discretion, were the result of transfers or referrals of End Users to a Partner Site where the Technology or Recommendations was installed by a third party content distribution service provider and that resulted in a monthly click-through rate that was less than fifty percent (50%) of the click-through rate experienced by the remainder of the page views where the Technology or Recommendations are installed that occurred on the Partner Site(s) during the same month. Notwithstanding anything to the contrary herein, Outbrain shall have the right to terminate this Agreement immediately and remove the Technology and Recommendations with no further obligations to Partner in the event of any violation of this [Section 5.3](#).

## 6. **SUSPENSION OF TECHNOLOGY; TERMINATION.**

6.1. Outbrain may suspend or discontinue all or any aspect of the Technology, including its availability, at any time if required by exigent circumstances (such as a significant security breach, propagation of malware, other viruses to users, etc.) or other improper, unlawful, fraudulent misleading circumstances, or Partner's breach of the terms of the Agreement.

6.2. Either party may terminate the Agreement at any time in the event of a material breach by the other party of any provision of the Agreement that remains uncured for fourteen (14) days after the breaching party's receipt of written notice of the breach.

6.3. Upon expiration or termination of the Agreement, all rights and obligations of the parties under the Agreement will be extinguished, except any terms of this Agreement which, by their nature, should survive termination, and continue to bind the parties.

## 7. LIMITED WARRANTIES; INDEMNITY.

7.1. Each party represents and warrants to the other that: (i) it has all right, power, and authority necessary to enter into the Agreement and perform its obligations under it; and (ii) it will comply with all applicable laws, regulations and orders in its performance of the Agreement.

7.2. Outbrain warrants that the Technology (as provided and made available by Outbrain and implemented by Partner in accordance with the Agreement) does not and will not, to the best of Outbrain's knowledge, infringe any Intellectual Property Right of any third party.

7.3. Partner represents and warrants that (i) it owns or has the right to operate the Partner Site(s); (ii) it will adhere to the [Outbrain Publisher Guidelines](#) (as up dated from time to time) and/or to the Partner's own guidelines which shall be substantially similar to Outbrain's; (iii) the Partner Sites do not and will not contain any Content that is illegal or that infringes any Intellectual Property Rights of any third party; (iv) it has all rights and authority to any Publisher Content provided to Outbrain; (v) the Partner Sites will not contain any obscene, defamatory, libelous, slanderous material or material that violates any person's right of publicity, privacy or personality; and (vi) the Partner Sites do not and will not knowingly contain a misrepresentation of fact or factual inaccuracy.

7.4. Nothing in the Agreement shall be construed as a promise of any sort of minimum traffic volumes, clicks, impressions or usage or any other such commitments by Outbrain to Partner.

7.5. Except as expressly provided in the Agreement, neither party makes any representations or warranties, express or implied in relation to the Agreement, the Partner Sites, the Technology, any Content made available by Outbrain through the Technology or any other matters (including any implied terms relating to satisfactory quality or fitness for any purpose, any warranties of availability or uninterrupted or error free performance, any warranties arising out of any course of performance or dealing).

7.6. Outbrain makes no representations or warranties concerning any Content contained in or accessed via the Technology, including without limitation Advertiser Recs, and Outbrain will not be responsible or liable for the contents, accuracy, intellectual property infringement, legality or decency of Content provided through the Technology or for Partner's reliance on any of the foregoing.

7.7. Each party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other party and its parent and affiliates, and each of its and their respective affiliates, directors, officers, shareholders, members, authorized representatives, employees and agents (collectively, the "**Indemnified Party**") from and against any and all claims, losses, liabilities, damages, costs, settlements, regulatory findings and/or fines and other expenses (including reasonable legal fees) (collectively, "**Claims**") that arise out of any third party claim occasioned by any breach of any of the Indemnifying Party's representations and warranties in this Agreement. The Indemnified Party shall promptly notify the Indemnifying Party of any Claim in writing, provided, however, that any delay in providing such notice shall not relieve the Indemnifying Party of any of its obligations except to the extent that the Indemnifying Party is prejudiced by such delay. The Indemnified Party shall have the right to participate in the defense with a counsel of its own choosing and Indemnified Party shall not settlement the Claim without the priori written consent of the Indemnifying Partner.

## 8. CONFIDENTIALITY.

Each party (the “**Receiving Party**”) acknowledges that it will have access to certain information and materials, including the terms of the Agreement, concerning the business, technology, products and services of the other party (the “**Disclosing Party**”) that are, or reasonably should be considered given the circumstances of disclosure to be, confidential (“**Confidential Information**”). Confidential Information will not include: (a) information known to the Receiving Party prior to disclosure by the Disclosing Party; (b) information independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; (c) information that is or becomes publicly known through no fault of the Receiving Party; or (d) information disclosed to the Receiving Party by a third party without breach of any obligation of confidence. Except as permitted hereunder, the Receiving Party (i) will not use any Confidential Information for its own benefit or the benefit of any third party, and (ii) will not disclose any Confidential Information to any third party other than its directors, employees, contractors, advisors, investors or potential investors who have a need to know and who have agreed not to use, and to maintain the confidentiality of, the Confidential Information consistent with this Section 8. The Receiving Party will return or destroy the Confidential Information promptly upon the Disclosing Party’s written request. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by applicable law or legal process, provided that the Receiving Party provides prompt written notice of any required disclosure to the Disclosing Party and provides reasonable cooperation (at the Disclosing Party’s expense) with any effort by the Disclosing Party to contest or limit the scope of such disclosure.

## 9. LIMITATION OF LIABILITY.

9.1. Neither Outbrain nor the Partner exclude or limit liability to the other for: (i) death or personal injury caused by its negligence or that of its employees or contractors; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot lawfully be excluded or limited.

9.2. SUBJECT ALWAYS TO SECTION 10.1, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY BREACH HEREOF (INCLUDING FOR LOSS OF DATA OR COST OF COVER), WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

9.3. SUBJECT ALWAYS TO SECTION 10.1 AND EXCEPT FOR LIABILITIES ARISING OUT OF A PARTY’S VIOLATION, MISAPPROPRIATION OR INFRINGEMENT OF A PARTY’S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY BREACH HEREOF (WHETHER UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE) EXCEED THE GREATER OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) OR THE AMOUNT OF REVENUE PAID OR PAYABLE PURSUANT TO THE APPLICABLE AND IN-EFFECT SOW, IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY (OR, IN THE CASE OF A SERIES OF CONNECTED EVENTS, THE FIRST SUCH EVENT).

## 10. EXPORT CONTROLS.

Partner will comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control (“**OFAC**”), or other United States or foreign agency or authority, and shall not export, or allow the export or re-export of the Technology in violation of any such restrictions, laws or regulations. By downloading or using the Technology, Partner agrees to the foregoing and represent and warrants that it is not located in, under the control of, or a national or resident of any restricted country. Partner represents and warrants that none of it, or any individual, entity, or organization holding any ownership interest or controlling interest in Partner, including any officer or director, is an individual, entity, organization with whom any United States law,

regulation, or executive order prohibits U.S. companies and individuals from dealing, including, names appearing on the Specially Designated Nationals List.

#### **11. MISCELLANEOUS.**

The Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of New York, without regard to its conflict of law provisions or the United Nations Conventions for the International Sale of Goods. Any action or proceeding arising from or relating to the Agreement must be brought in a federal court in the Southern District of New York or in state court in New York County, New York, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The parties agree that irreparable damage would occur if any of the provisions of the Agreement is not performed in accordance with these specific terms. Accordingly, the parties agree that each shall be entitled to injunctive relief to prevent breaches of the Agreement and to enforce specifically the terms and provisions of the Agreement, in addition to any other remedy to which they are entitled at law or in equity. The parties are independent contractors, and nothing in the Agreement will be construed to create a partnership, joint venture, agency or other relationship between the parties. No failure or forbearance by a party to enforce any of its rights under the Agreement or insist upon performance of the other party's obligations under the Agreement will be deemed a waiver of such rights or obligations to any extent, and no waiver by either party of any default or breach of the Agreement will constitute a waiver of any other or subsequent default or breach. Neither party will be liable for any failure to perform due to causes beyond the party's reasonable control. The Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or verbal, concerning such subject matter. The Partner Enrollment Form may be amended, modified or superseded, only by a written instrument signed by both parties. The headings in the Agreement are for the convenience of reference only and have no legal effect. Any reference to days in the Agreement shall be deemed business days unless otherwise specified. The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. If any provision of the Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, failing which, it shall be severed from the Agreement and the balance of the Agreement shall continue in full force and effect. Neither party may assign the Agreement or any of its rights or obligations hereunder without the other party's prior written consent, except (i) due to operation of law, merger, reorganization, or as a result of an acquisition or change of control, and (ii) by Outbrain to its subsidiaries. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.