

## Standard Partner Distribution Terms

Effective 21 September 2021

These terms were last revised and are current as of the effective date set forth above. Outbrain reserves the right to change these terms from time to time.

The following Standard Partner Distribution Terms ("Terms") govern the implementation and use of the products, services, and technology made available by Outbrain to the Partner identified in a Partner Enrollment Form. To the extent that Partner has not yet signed a Partner Enrollment Form (1) references to "the Agreement" shall be to the Terms and the [Data Sharing Agreement](#), and (2) these Terms permit the use of the Technology, but no payment shall accrue or be made to Partner until such Partner Enrollment Form is signed by both Outbrain and Partner.

### 1. CERTAIN DEFINITIONS

- 1.1 "**Advertiser Recs**" means Recommendations (that are not Recirculation Recommendations) in the Outbrain network submitted by Outbrain's advertisers.
- 1.2 "**Content**" means graphical, textual, and/or auditory content (which may include text, data, information, photos, images, graphics, audio, video or other content).
- 1.3 "**Data**" means all data collected or generated by Outbrain through the Technology, including any reports or other data made available to Partner in connection with Agreement.
- 1.4 "**Destination Page**" means any webpage or other online location that may be accessed by clicking on Recommendations.
- 1.5 "**End Users**" means natural persons who visit or use Partner Sites.
- 1.6 "**Partner Sites**" means the web properties, applications or platforms identified in the Partner Enrollment Form, together with any additional properties on which Partner elects to implement the Technology upon prior written approval from Outbrain (e-mail will suffice) and on which Partner has ownership and control.
- 1.7 "**Recirculation Recs**" means Recommendations (that are not Advertiser Recs) which link to Content on Partner Sites.
- 1.8 "**Recommendations**" means the display of Content that Outbrain delivers to the viewer of a web page, application or platform on which the Technology is implemented. For clarity, Recommendations may include Advertiser Recs and/or Recirculation Recs.
- 1.9 "**Revenue**" means net revenue generated from Advertiser Recs and charged by Outbrain for the display of such Advertiser Recs in the Outbrain network.
- 1.10 "**Technology**" means the Javascript, API, SDK and associated protocols provided by Outbrain to Partner that, when implemented on Partner Sites, display one or more Recommendation(s) and/or permit users to navigate to Destination Pages by clicking on such Recommendations.
- 1.11 "**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 implement the Technology pursuant to Outbrain's technical instructions, including 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 or any other equivalent technology) shall be used in each Partner implementation. Implementations of the Technology must appear directly below the main Content on each page of the Partner Sites on which

the Technology is installed or as otherwise mutually agreed in writing (e-mail shall suffice).

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 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) days of receipt of same from Outbrain; provided, that if Outbrain requests Partner to implement any Updates that Partner can demonstrate 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 During the Term, Outbrain shall be Partner's sole and exclusive provider content recommendations, where "content recommendations" are one or more links comprised of a headline or phrase indicating that an End User will be driven to Content (regardless of whether the Destination Page displays content, advertorials or advertisements).

2.5 Notwithstanding any other provision of the Agreement and unless Outbrain provides prior written consent, any implementation of the Technology must include at least one (1) link to Advertiser Recs per page (i.e., Partner will use the Technology to provide Advertiser Recs and Recirculation Recs).

2.6 Outbrain may test changes to the Technology and, based on the results of such testing, Outbrain may make optimisations to the Technology if such optimisations may result in increased click through rates on Advertiser Recs (as calculated by Outbrain in its sole discretion). To the extent that Partner uses the API and thus 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 will be paid the percentage of Adjusted Gross Revenue indicated on the Partner Enrollment Form. Outbrain shall make such payments within a certain number of days (as indicated on the Partner Enrollment Form) after the end of any calendar month during which Outbrain collects Revenue. For the avoidance of doubt, Revenue is net of, *inter alia*, fees for third-party data services integrated into Outbrain's platform, invalid clicks/impressions, and advertiser and agency discounts/rebates.

3.2 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 withholding taxes payable by Outbrain from payments owed to Partner by Outbrain 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. All payments to Partner shall be subject to withholding for income taxes and similar deductions, as required by applicable law.

3.3 To ensure proper payment, Partner is responsible for notifying Outbrain 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. Any dispute regarding a payment from Outbrain must be submitted to Outbrain in writing within thirty (30) days of postage or wire transfer date of such payment or it shall be deemed waived.

3.4 Outbrain may withhold, set off, charge or credit back payments to Partner, if Outbrain, in its sole reasonable discretion, believes that any activity related to such payment is fraudulent or invalid in nature or if Outbrain was charged, credited back or not paid for any reason by the advertiser. Invalid activity is determined by Outbrain in all cases and may include, but is not limited to, (i) invalid clicks on or impressions of Advertiser Recs generated by any person, bot, automated program or similar device, including through any clicks/impressions originating from Partner's IP addresses or computers under Partner's control;

(ii) clicks/impressions solicited or generated by payment of money, false representation, or requests for End Users to click on Advertiser Recs or take other actions; (iii) Advertiser Recs served to End Users whose browsers have JavaScript disabled; and (iv) clicks/impressions co-mingled with a significant amount of the activity described in (i, ii, and iii) above.

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

#### **4. PRIVACY**

4.1 The parties are each a controller and/or a business in respect of End User data collected and processed via the Partner Sites and each party shall comply with all relevant provisions of data protection laws as it applies to matters under the Agreement and ensure that they process data fairly and lawfully in the provision and receipt of the Technology.

4.2 Each party shall at all times satisfy the requirements for an appropriate legal basis for the processing of End User data.

4.3 Outbrain and Partner shall each maintain and display on their respective websites an easily accessible and discoverable privacy notice and/or policy that complies with all applicable laws, and with respect to Partner, that discloses usage of third-party technology to collect, use and share data for the purpose of providing Recommendations on Partner Sites. Outbrain's Privacy Policy is available [here](#).

4.4 Requests from End Users relating to the Technology can be exercised directly from [Outbrain Interest Profile](#).

4.5 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 full compliance with all of the terms of the Agreement, Outbrain grants Partner a limited, non-exclusive, revocable, non-sublicensable, non-transferable licence to use the Technology to display the Recommendations on Partner Sites in the form and format provided.

5.2 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.

5.3 As between the parties: (a) Outbrain retains all right, title and interest in and to the Outbrain Marks, Technology, Data, and Content displayed on or made available by the Technology (excluding any Content from the Partner Sites which shall be owned by Partner); 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 subparagraph (a) above, (including without limitation all intellectual property rights in them).

5.4 The licences 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.

#### **6. PROHIBITED ACTIVITY**

6.1 Partner will not: (i) edit, modify, truncate, filter, or change the order of Recommendations; (ii) obscure, modify or redirect End Users away from a Destination Page, or intersperse any Content between the Recommendations and any Destination Page; (iii) minimise, remove or otherwise inhibit the full and complete display of the Technology; (iv) artificially inflate clicks or impressions on Recommendations, or encourage or require any person to click on Recommendations using incentives or other

methods and/or engage in any automated, deceptive, fraudulent, invalid, incentivised, or other methods that are designed to generate clicks which are not the willing actions of End Users; (v) remove, deface, obscure, or alter any notices of intellectual property rights included in the Technology; (vi) access, reproduce or use the Technology in any manner or for any purpose other than as expressly permitted under the Agreement; (vii) modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Technology, or attempt to create a substitute or similar service or product through use of or access to Technology or related proprietary information; (viii) attempt to interfere with or disrupt the Technology or attempt to gain access to any systems or networks that connect to it other than through the Technology as implemented pursuant to the Agreement; (ix) copy, cache, distribute, display, alter, or otherwise use any Recommendations (or authorise or assist any third party to do so) except as such Recommendations are provided through the Technology; or (x) use the Technology for any purpose not authorised by Outbrain, including for any purpose that is inconsistent with the Implementation Guides as provided to Partner.

6.2 Partner will not deploy the Technology on any properties that display or contain adult, obscene, pornographic, defamatory, libellous, infringing, abusive, fake or deceptive or illegal Content, that promotes hate or discrimination, facilitates the sale of firearms or illegal drugs, or that participates or encourages participation in, illegal activities or is directed at children under of the age of 16. Outbrain reserves the right in its sole discretion to disable the Technology on any property at any time.

6.3 Except as expressly and unambiguously authorised under the Agreement, Partner will not copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile (except to the limited extent expressly authorised by applicable statutory law), modify or alter any part of the Technology or otherwise use the Technology on behalf of or for the benefit of any third party.

## **7. REGISTRATION**

Partner is not required to register on the Outbrain website to use the Technology. If Partner registers, it will have access to online reports and the Outbrain dashboard, which allows Partner to control certain settings for the Technology, including certain Recommendation functionality. To the extent that Partner has access to the Outbrain dashboard, Outbrain may collect Partner's (or individuals who act on behalf of Partner) personally identifiable information. Partner will be solely responsible for all changes to data made by it, or individuals acting on Partner's behalf, through the Outbrain dashboard. Estimates of revenue displayed in the Outbrain dashboard are provided solely for the Partner's convenience. Outbrain does not guarantee that these estimated amounts displayed, if any, shall be precise or definitively due to be paid to Partner as a result of the Access to Outbrain dashboard shall be solely at the discretion of Outbrain and may be discontinued by Outbrain at any time.

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

8.1 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 or misleading circumstances.

8.2 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 seven (7) days after the breaching party's receipt of written notice of the breach.

8.3 The Agreement is terminable on fourteen (14) days prior written notice unless otherwise stated on the Partner Enrollment Form. In addition, Outbrain may terminate the Agreement on prior written notice if the Technology is not implemented within thirty (30) days of Outbrain sending the Technology to Partner. Upon expiration or termination of the Agreement, all rights and obligations of the parties under the Agreement will be extinguished, except that Sections 9.6., 9.7., 10, 11 and 13 of the Terms will survive termination, as well as any other terms of this Agreement which, by their nature should survive termination, and continue to bind the parties.

## **9. LIMITED WARRANTIES; INDEMNITY**

9.1 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.

9.2 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.

9.3 Partner represents and warrants that the Partner Sites do not and will not contain any Content that is: (i) illegal; (ii) infringes any Intellectual Property Right of any third party; (iii) is obscene, defamatory, libellous, slanderous material or material that violates any person's right of publicity, privacy or personality; or (iv) knowingly contains a misrepresentation of fact or factual inaccuracy.

9.4 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.

9.5 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).

9.6 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.

9.7 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, authorised 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 or alleged breach of any of the Indemnifying Party's representations, warranties and obligations of the 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 actually prejudiced by such delay. The Indemnified Party shall have the right to participate in the defence and settlement of the Claim with counsel of its own choosing and its own expense, subject to the Indemnifying Party's control thereof.

## 10. 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 (aa) will not use any Confidential Information for its own account or the account of any third party, and (bb) 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 10. 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.

## 11. LIMITATION OF LIABILITY

11.1 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.

11.2 Subject always to Section 11.1, neither party will be liable for: (a) any special, indirect, incidental or consequential loss or damage; (b) any loss of goodwill or reputation; (c) any loss of data; (d) any loss of contracts, business or anticipated savings; or (e) any loss of profits arising out of or in connection with the Agreement or any breach hereof, whether or not such party has been advised of the possibility of such loss or damage, howsoever incurred and whether under a theory of contract, tort (including negligence) statutory duty or otherwise.

11.3 Subject always to Section 11.1 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 (whether under a theory of contract, tort (including negligence), statutory duty, or otherwise) exceed the greater of: (i) £100,000 GBP; and (ii) 125% of the amount of Revenue paid or payable to the Partner 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).

11.4 Each party acknowledges to each other that it accepts that the restrictions on the liability of each other party, as set out in the Agreement are reasonable in all the circumstances.

## 12. 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 organisation holding any ownership interest or controlling interest in Partner, including any officer or director, is an individual, entity, organisation 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.

## 13. MISCELLANEOUS

The Agreement shall be interpreted and construed in accordance with and governed by the laws of England and Wales, 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 submitted to the exclusive jurisdiction of English courts. The parties agree that irreparable damage would occur in the event that 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 oral, concerning such subject matter. The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a Party to this Agreement. 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. The Agreement may be executed and delivered via electronic transmission or another means of complete and accurate reproduction, and copies of the Agreement delivered via such means will be deemed originals for all purposes. 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, reorganisation, 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.