

The Engage Terms vary according to the country where your billing address is located. Please use your billing country below to view the applicable Engage Terms.

My billing address is located in:

United States of America

STANDARD ENGAGE TERMS

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 (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

- a. "Content" means graphical, textual and/or auditory content (which may include text, data, information, photos, images, graphics, audio, video or other content).
- b. "Content Recommendations" means links to Content that Outbrain delivers to the viewer of a web page, application or platform on which the Technology is implemented. For clarity, Content Recommendations may include Promoted Content and/or Recirculation Links.
- c. "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 the Agreement.
- d. "Destination Page" means any webpage or other online location that may be accessed by clicking on Content Recommendations.
- e. "End User" means individual human end users of the Partner Site(s).
- f. "Promoted Content" means Content Recommendations that generate revenue based on valid End User clicks.
- g. "Promotional Revenue" means revenue collected by Outbrain from Outbrain customers that have paid for the distribution of Promoted Content.
- h. "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).
- i. "Recirculation Links" means Content Recommendations that are not Promoted Content

and which may, as directed by Partner to Outbrain, link to Content on Partner Sites selected and approved by Partner.

- j. "Technology" means the Javascript, API, SDK and associated protocols provided by Outbrain to Partner that, when implemented on Partner Site(s), display one or more Content Recommendation(s) permitting users to navigate to Destination Pages by clicking on such Content Recommendations.

2. TECHNOLOGY; PLACEMENT AND APPEARANCE

- a. Implementations of the Technology on a website shall 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).
- b. Partner shall display the Technology in accordance with all applicable laws and regulations, including with respect to disclosing the source or nature of the Content Recommendations. Without limiting the foregoing obligation, Partner agrees to comply with Outbrain's instructions regarding how the Technology is to be displayed, labeled or identified.
- c. Outbrain may make updates, modifications or improvements to the Technology from time to time in its sole discretion. If Outbrain requests Partner to implement any such update, Partner will use commercially reasonable efforts to do so within thirty (30) days of receipt of same from Outbrain; provided, that if Outbrain requests Partner to implement any Update that Partner reasonably determines would materially and adversely affect the performance of the Partner Site(s), Partner may elect to cease displaying the Technology on such page(s) unless Outbrain either addresses Partner's concerns to its reasonable satisfaction or agrees not to require Partner to implement such Update.
- d. During the Term, Outbrain shall be Partner's sole and exclusive provider of 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).
- e. Notwithstanding any other provision of the Agreement and unless Outbrain provides prior written consent,, any implementation of the Technology shall include at least one (1) link to Promoted Content per page (i.e., Partner may not use the Technology solely to provide Recirculation Links).

3. REVENUE & PAYMENT

- a. During the Term, Partner will be paid the percentage of Adjusted Gross Revenue indicated on the Partner Enrollment Form. Such payments shall be made within the number of days of the end of the calendar month during which Outbrain collects any Promotional Revenue indicated on the Partner Enrollment Form.

- b. If the amount owed to Partner is less than US\$50, then the amount owed will be accrued until the calendar month in which the balance of the payments due to Partner exceeds US\$50. Such payments shall be subject to withholding for income taxes and similar deductions, as required by applicable law. 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. Outbrain may withhold, charge or credit back payments to Publisher, if Outbrain, in its sole reasonable discretion, believes that the performance related to them are fraudulent or invalid in nature or if Outbrain was charged or credited back in their respect by the customer. Invalid activity is determined by Outbrain in all cases and may include, but is not limited to, (i) invalid clicks on Promoted Content generated by any person, bot, automated program or similar device, including through any clicks originating from Partner's IP addresses or computers under Partner's control; (ii) clicks solicited or generated by payment of money, false representation, or requests for End Users to click on Promoted Content or take other actions; (iii) Promoted Content served to End Users whose browsers have JavaScript disabled; and (iv) clicks co-mingled with a significant amount of the activity described in (i, ii, and iii) above. 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, 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 customer whose Promoted Content is displayed on any Partner Site defaults on payment to Outbrain, Outbrain may withhold payment or charge back Partner's account. 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.
- c. During each month, Outbrain shall provide Partner with reports that may include estimates of revenue earned by Partner, but for the avoidance of doubt, Outbrain does not guarantee that these estimated amounts so displayed during a calendar month, if any, shall be precise or definitively due to be paid to Partner as a result of the Agreement.

4. PRIVACY

- a. Outbrain and Partner shall each maintain and display on their respective websites a privacy policy that complies with all applicable laws, and with respect to Partner, that explains how data is collected and used in connection with the Partner Sites. Outbrain's current privacy policy is available at <http://www.outbrain.com/legal/privacy>.
- b. Partner shall implement the Technology in accordance with all of Outbrain's reasonable instructions determined by Outbrain to be necessary to enable Outbrain to comply with applicable data protection laws. Partner acknowledges and agrees that it is Partner's

(and not Outbrain's) responsibility to ensure that Partner's use of the Technology complies with all data protection legislation applicable to Partner (including, in particular, in respect of the placing and use of third party cookies, upon which the Technology relies, and the capturing of any consent to cookies required to be obtained from the relevant End User).

- c. Partner acknowledges that users of the Technology may elect to register for Outbrain and that such registration may result in collection of personally identifiable information provided by the End Users.

5. LICENSE TERMS.

- a. 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, nontransferable license to use the Technology to display the Content Recommendations on Partner Sites in the form and format provided. If Partner has been granted use of the Outbrain API or SDK, Partner shall use the Outbrain API or SDK in accordance with the Outbrain applicable implementation guide made available by Outbrain from time to time, which may be revised from time to time upon notice from Outbrain.
- b. Outbrain grants Partner, during the Term, a limited, worldwide, non-exclusive, royalty-free license 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 customers 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.
- c. 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 Site(s) including the look and feel, excluding the items described in subparagraph (a) above, (including without limitation all intellectual property rights in them).
- d. 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.

6. PROHIBITED ACTIVITY.

- a. Partner will not: (i) edit, modify, truncate, filter or change the order of Content Recommendations; (ii) obscure, modify or redirect Partner Site users away from a Destination Page, or intersperse any Content between the Content Recommendations and any Destination Page; (iii) minimize, remove or otherwise inhibit the full and complete display of the Technology; (iv) artificially inflate clicks on Content Recommendations, or encourage or require any person to click on Content Recommendations using incentives or other methods; (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 Content Recommendations (or authorize or assist any third party to do so) except as such Content Recommendations are provided through the Technology; or (x) use the Technology for any purpose not authorized by Outbrain, including with respect to the API or SDK, for any purpose that is inconsistent with the API or SDK Implementation Guides as provided to Partner.
- b. Partner will not deploy the Technology on any properties that display adult, obscene, pornographic, defamatory, libelous, infringing, abusive, 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. Outbrain reserves the right in its sole discretion to disable the Technology on any property at any time.
- c. Except as expressly and unambiguously authorized under the Agreement, Partner will not copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile (except to the limited extent expressly authorized 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 the Content Recommendation functionality. To the extent that Partner registers and has access to the Outbrain dashboard, Partner will be solely responsible for all changes made through the Outbrain dashboard. 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.

- a. 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, or other improper, unlawful or fraudulent use, etc.).
- b. 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 fifteen (15) days after the breaching party's receipt of written notice of the breach.
- c. The Agreement is terminable on thirty (30) days prior written notice unless otherwise stated on the Partner Enrollment Form. Upon expiration or termination of this Agreement, all rights and obligations of the parties under this Agreement will be extinguished, except that Sections 9.f., 9.g., 10, 11 and 13 of the Terms will survive and continue to bind the parties in accordance with their terms.

9. LIMITED WARRANTIES; INDEMNITY

- a. 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.
- b. 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.
- c. Partner represents and warrants that the Partner Site(s) do not and will not contain any Content that is: (i) illegal; (ii) infringes any Intellectual Property Right of any third party; or (iii) is obscene, defamatory, libelous, slanderous material or material that violates any person's right of publicity, privacy or personality.
- d. Nothing in the Agreement shall be construed as a promise of any sort of minimum traffic volumes, clicks or usage or any other such commitments by Outbrain to Partner.
- e. 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).
- f. Outbrain makes no representations or warranties concerning any Content contained in or accessed via the Technology, including without limitation Promoted Content, 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.

- g. 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 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, 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 defense 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 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

- a. 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.
- b. EXCEPT IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, 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.
- c. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR 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 ADJUSTED GROSS 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).

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 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.

13. 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 in the event that any of the provisions of the Agreement is not performed in accordance with its specific terms or were otherwise breached. 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 Agreement 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. All provisions of the Agreement that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers and limitations of liability. 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.