

Effective October 19, 2018

These Terms and Conditions were last revised as of the effective date set forth above. Outbrain reserve the right to change these Terms and Conditions from time to time.

## Amplify Terms and Conditions

These Amplify Terms and Conditions (“**Terms**”) are entered into by **Outbrain UK Limited** (“**Outbrain**”) and the entity executing an Insertion Order or using the Outbrain dashboard (“**Customer**”). These Terms govern Customer’s use of the Outbrain service, and together with an Insertion Order (or the information entered through the Outbrain dashboard (“**Dashboard**”)) comprise the “**Agreement**” between Outbrain and Customer. If there is any inconsistency between: (i) the terms of a signed Insertion Order or those entered through the Dashboard (either “**Campaign Details**”) and (ii) these Terms, the Campaign Details as applicable, shall prevail.

### 1. Services

1.1 Outbrain partners with a network of online properties (the “**Network**”) and displays a user interface containing links that navigate to websites (the “**Service**”). Outbrain uses its proprietary algorithms to determine what links appear within the Service on the Network.

1.2 Outbrain shall display links to graphical, textual, video and/or auditory content selected by Customer (the links and the content accessed from the link together are the “**Content**”) on the Network through the Service. Customer will only be charged for the number of clicks on Content. Fees will be based on the number of clicks received multiplied by the cost-per-click determined by Customer in the Campaign Details (“**CPC**”), provided that the CPC may not be less than Outbrain’s then-in-effect minimum CPC (which may vary by market). If Customer is utilizing Outbrain’s automatic bidding feature, Customer grants Outbrain the right to set and modify Customer’s CPC at Outbrain’s discretion to aid in achieving Customer’s performance targets for its campaign. Outbrain shall continue to distribute the Content on the Network until the earlier of: (i) the end date of Customer’s campaign, (ii) reaching Customer’s budget, or (iii) disabling a campaign (provided that Outbrain reserves the right to charge for additional clicks as Content is removed from circulation – see [FAQs](#) for more details).

1.3 Outbrain will make reports available to the Customer, which provide information about the number of clicks received during the campaign. The final monthly reports (which may differ from the daily reports) will provide the conclusive basis for Outbrain’s calculation of the fees owed by Customer. Customer may submit its own Outbrain-compatible click tracker. If there is a 10% discrepancy or more between Customer’s numbers (based on the Outbrain-compatible click tracker) and Outbrain’s numbers then the parties agree to work in good faith to identify the correct amount to be paid to Outbrain. If the discrepancy is less than 10%, Outbrain’s numbers shall be conclusive.

1.4 Outbrain does not guarantee: (i) the placement, positioning or the timing of delivery of any Content; (ii) clicks on any Content (including clicks from a particular audience segment), or (iii) conversions. If the Content does not receive clicks amounting to the budget, Customer’s sole remedies shall be to: (i) extend the end date of the applicable campaign; (ii) replace or add to the Content with other Content (also subject to Section 2 below) to complete the campaign; or (iii) to pay only for actual clicks on the Content. In no event shall Outbrain be liable for failure to provide clicks.

1.5 Outbrain may also make additional Service features available to Customer from time to time. Customer’s use of the Service may be subject to Customer’s agreement of certain additional terms and conditions, (“**Additional Terms**”) (e.g., via an online click-through agreement or via the Dashboard). Such features will be provided at Outbrain’s discretion to Customer and may include CPC fees in addition to those described in Section 5.1. Customer’s acceptance of the Additional Terms will constitute a binding and enforceable agreement as between Outbrain and Customer. In the event of a conflict between these Terms, the Additional Terms, and the Campaign Details, the order of precedence will be as follows: (A) Additional Terms, (B) Campaign Details, and (C) these Terms. Customers who choose to utilize LiveRamp services (via the Outbrain dashboard or otherwise) for

purposes of their Outbrain campaign(s) will be subject to [LiveRamp terms](#).

1.6 Subject to Customer's compliance with [Section 8](#) below, Customer may place Outbrain pixel(s) (the "Outbrain Pixel") on Customer's website or application pages and/or third party pixels or tags ("the "Third Party Pixels") for the purpose of providing analytics related to Customer's campaign and/or enhanced targeting functionality. In addition, Customer may place third party pixels or tags on Content for the purposes of providing analytics to Customer ("Third Party Pixel")(the Outbrain Pixel and Third Party Pixels together are the "Pixels"). Customer represents and warrants that (a) its use of the Pixels is in accordance with Data Protection Laws and; (b) it has provided appropriate notice to users regarding use of the Pixels, including an explanation (i) that third parties, including Outbrain, may use cookies or similar technologies to collect or receive information from Customer's website(s) and may use that information to provide measurement services and target ads; and (ii) as to how users opt-out of the collection of information for targeting purposes. Customer shall not use the Pixels unless and until it has complied with the provisions of this Section 1.6.

1.7 If Customer has requested third party segments for enhanced targeting ("3rd Party Targeting") of its campaign(s), Customer shall pay for its use of 3rd Party Targeting ("3rd Party Data Costs") including any applicable taxes. Customer's invoice for each campaign shall include both the Outbrain fees, pursuant to Section 5.1, plus the 3rd Party Data Costs (if applicable) for utilizing 3rd Party Targeting. Customer agrees that all clicks for the purposes of calculating 3rd Party Data costs will be based on Outbrain's reporting metrics. If Customer utilizes 3rd Party Targeting the Customer shall (i) disclose this to users via an appropriate notice and/or in its privacy policy (as applicable) and; (ii) not use 3rd Party Targeting to target minors or other sensitive categories of data.

## 2. Content

2.1 Customer has the right and authorises Outbrain to place the Content on the Network and is solely responsible for determining the propriety and legality of the Content. In addition, Content selected by Customer must comply with Outbrain's [Content Guidelines](#), as may be updated from time to time by Outbrain. Outbrain may at any time (at its sole discretion) reject or remove Content. Customer acknowledges that Outbrain is not responsible for the Content and that the Content may change during the course of a campaign due to revisions by the Content's author, comments from readers, or otherwise. Customer's recourse in the event of such change shall be to direct Outbrain to remove such Content from its then-current campaign and/or select other Content. Customer further acknowledges that, if there is an objection to the Content (whether from the Content author or publisher, or otherwise) Outbrain will act in accordance with section 2 of its [Terms of Use](#) and may cease (at its sole discretion) including the Content in the Service.

2.2 Customer represents and warrants that: (i) if the Content was written by or under the direction of Customer or paid for by Customer, that fact shall be clearly disclosed on or near the Content; (ii) it is authorised to use and/or has approved all words of the Content's headline (whether written by Customer or on Customer's behalf); and (iii) Content headlines accurately reflect the tone and subject matter of the Content and, (iv) it is authorized to use and/or has approved any image(s) related to its campaign(s) with Outbrain.

2.3 Customer shall not, directly or indirectly, provide Content that: (i) is obscene, defamatory, libelous, slanderous, pornographic, violent, profane, indecent or unlawful; (ii) is factually inaccurate, misleading or deceptive; or (iii) facilitates or promotes any type of illegal activity, including without limitation pyramid schemes, gambling, the sale or use of illicit drugs, or discrimination or harassment of any individual or group. Further, each piece of Customer Content shall neither (a) redirect to a destination other than as originally submitted to the Service, and/or (b) be substantively different from the Content originally submitted to the Service.

2.4 Both parties shall implement anti-malware scanning processes of the Content. Upon notice, both parties shall take immediate action to remove any suspicious Content from the Network.

## 3. Term and Cancellation

The Campaign Details will set forth the start and end date of a particular campaign. However, the Agreement, or an individual

campaign may be suspended or terminated: (i) by Customer for any reason upon two (2) business days' written notice to Outbrain or within twelve (12) hours through the Dashboard; or (ii) by Outbrain for any reason upon fourteen days (14) days' written notice to Customer. During the notice period, all previously contracted campaigns shall continue to run pursuant to the Campaign Details and Customer shall be responsible for paying Outbrain for all clicks received during such notice period. Outbrain also reserves the right to suspend or terminate Customer's use of the Service if Outbrain reasonably believes Customer is in breach of the terms of this Agreement.

#### **4. Campaign Details**

If Customer utilizes Outbrain's Dashboard, Customer will have access to certain online reports and control over its campaign(s). To the extent Customer registers and has access to the Dashboard, Outbrain may collect certain personal data of the Customer. We collect and process this personal data in order to respond Customer questions or requests, provide Customer's with access to certain services, verify Customer's identity and communicate with Customers about the use of the Service. Customer is solely responsible for all changes requested or approved (either directly or via Outbrain's API) including those made through the Dashboard using its login. Customer is solely responsible for protecting its login and password to the Dashboard. Customer can manage campaigns using the Dashboard by modifying the Campaign Details and/or Customer may have the option of working with an Outbrain account manager, as determined by Outbrain.

#### **5. Fees and Payment Terms**

5.1 Customer shall pay Outbrain fees (based on the number of clicks on the Content, as measured by Outbrain's tracking system, multiplied by the CPC) and any applicable taxes. Customer may increase the budget through the Dashboard or through an amendment to an Insertion Order.

5.2 If Customer has signed an Insertion Order, fees will generally be invoiced by Outbrain to Customer within thirty (30) days of the end of each calendar month for clicks received during the previous month, unless otherwise set forth in an IO. Customer shall pay all invoices within thirty (30) days from receipt. Any portion of a charge not disputed in good faith must be paid in full. If Customer has provided the Campaign Details through the Dashboard or has signed an Insertion Order and has used a credit card for billing purposes, Outbrain shall charge the Outbrain fees (including processing fees) to Customer's credit card at such intervals as Outbrain determines in its sole discretion. The decision as to whether to allow Customer to choose between invoice and credit card rests solely with Outbrain. Outbrain shall review all billing inquiries, including refund requests on a case-by-case basis and reserves the right to approve or deny any request in its sole discretion.

5.3 If Customer disputes any amount on an invoice, Customer should provide written notice to Outbrain (email is sufficient) within thirty (30) of receipt of invoice. Customer's email must include the amount disputed and provide adequate information to support any such claim. Within twenty (20) business days of receipt of Customer's email, Outbrain will investigate and provide Customer with a written response. Customer may not withhold payment for any undisputed amounts, and any portion of a charge not disputed in good faith within thirty (30) days from receipt of invoice must be paid in full

5.4 If payment is not made when due and not properly disputed pursuant to Section 5.3, Outbrain may charge interest at the rate of 2% per annum above the prevailing base rate of Barclays Bank PLC from the due date until the date of actual payment, whether before or after judgment. Outbrain also reserves the right to suspend or terminate Customer's use of the Service until Customer has paid all amounts due and to charge Customer for all costs of collection, including collection agency and reasonable legal fees and court costs. Customer authorises Outbrain to investigate Customer's credit record. If applicable, Customer agrees to provide such further financial information and documentation as may be required from time to time by Outbrain as a condition for the continued extension of credit. Customer acknowledges and agrees that any account, credit card and related billing and payment information which Customer provides to Outbrain may be shared by Outbrain with companies who work on Outbrain's behalf solely for the purpose of performing credit checks, effecting payment to Outbrain, collecting debts owed to Outbrain and/or servicing Customer's account. Outbrain may, in its sole discretion, extend, revise or revoke credit at any time.

#### **6. Confidentiality**

6.1 Each party agrees that with respect to any Confidential Information (as defined below) that is disclosed by one party to the other in connection with the Agreement, the party receiving such Confidential Information shall not disclose such Confidential Information to any third party, or use it for any purpose, except in connection with its rights and obligations under the Agreement. "Confidential Information" means all information concerning a party or any of its subsidiaries or affiliates that is not generally known to the public, which information is marked confidential or proprietary, or which under the circumstances ought reasonably to be treated as confidential or proprietary, and includes, without limitation, the terms of the Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is, as of the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (ii) was lawfully in the possession of the receiving party as of the time of disclosure; (iii) is independently developed by the receiving party without reference to the Confidential Information; or (iv) is subsequently obtained from a third party not subject to an obligation of confidentiality with respect to the information disclosed.

6.2 Confidential Information shall be kept in the strictest confidence and shall be protected by all reasonable and necessary security measures. Confidential Information shall not be released by the receiving party to anyone except an employee or agent, who has a need to know same, and who is bound by confidentiality obligations at least as restrictive as these contained herein. Neither party will use any portion of Confidential Information provided by the other party pursuant to the Agreement for any purpose other than as expressly set forth under the Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information strictly necessary to comply with the demands of any court order, law or governmental agency and Outbrain may share Confidential Information of Customer with any holding company of Customer or with any subsidiary company of Customer's holding company.

6.3 If Customer is acting on behalf of a Content provider, Customer authorises Outbrain to grant such Content provider (or any subsequent third party appointed by the Content provider) access to and a right to use the Campaign Details.

## 7. Additional Representations and Warranties/Disclaimers

7.1 Each party represents and warrants to the other party that: (i) it has all necessary rights and authority to enter into the Agreement and grant the rights and licences under the Agreement; (ii) it shall comply with Applicable Laws, and (iii) the execution or acceptance of the Agreement (which includes the Campaign Details), and the performance of its respective obligations and duties pursuant to the Agreement, do not and will not violate any agreement to which such party is bound. "Applicable Laws" means any applicable federal, state or foreign laws or regulations or any industry self-regulatory rules or guidelines (including the Interactive Advertising Bureau Guidelines, Standards & Best Practices, the NAI Code of Conduct, the DAA Self-Regulatory Principles for Online Behavioral Advertising, and the EU General Data Protection Regulation (2016/679) ("GDPR"). The GDPR, together with any applicable national data protection laws are hereinafter referred to as the "Data Protection Laws".

7.2 Customer further represents and warrants that: (i) the Content does not violate any Applicable Laws, rules and regulations and will not contain any material which may be harmful, abusive, obscene, threatening or defamatory; (ii) it has all necessary rights to permit and grants Outbrain pursuant to the Agreement all such rights which are necessary for Outbrain to (as applicable) use, host, cache, route, store, copy, modify, distribute, reformat, reproduce, publish, display, transmit and distribute the Content; (iii) use of the Content in accordance with the Agreement will not infringe any intellectual property rights of any third party; (iv) it cannot and will not attempt to provide Content that is targeted to children under the age of thirteen; and (v) it will not use the Service in a manner that provides an unintended advantage or interferes with the integrity and/or overall performance of the Service and (vi) if using the Dashboard, Customer will adhere to any rules of such use as solely determined by Outbrain (e.g. not using source bidding to whitelist any particular Network source)..

7.3 If Customer is an agency (or other third party acting on behalf of the provider of the Content), Customer represents and warrants that: (i) it is the authorised agent of the provider of the Content; (ii) it has the legal authority to enter into the Agreement and make all decisions and take all actions relating to the provider of the Content; (iii) it has entered into a written agreement granting the agent the authority to represent the provider of the Content in accordance with (i) and (ii) above (and shall submit such agreement to Outbrain on demand). Customer further agrees that it is not acting on behalf of a French content provider exclusively through the Dashboard. If Customer is acting on behalf of a French content provider, please

contact [info@outbrain.com](mailto:info@outbrain.com) for more information on how to purchase Outbrain Services on behalf of a French content provider and in compliance with applicable French laws.

7.4 No conditions, warranties or other terms apply to any Outbrain services supplied by Outbrain under this Agreement unless expressly set out in this Agreement. No implied conditions, warranties or other terms apply (including without limitation any implied terms as to satisfactory quality, fitness for purpose or conformance with description or any warranties arising from a course of dealing, usage or trade practice or regarding the performance or success of any campaigns made by it on behalf of the Customer or that the Services will operate uninterrupted, secure or error free).

## 8. Data Protection

The parties acknowledge that some or all of data used or collected through the Service (or use of Outbrain Pixels) may qualify as, or include, Personal Data, however, as of the Effective Date, Outbrain does not send and/or receive any end-user data to the Customer.

In addition to complying with all applicable laws (including Data Protection laws) each party shall be responsible for including the provision of relevant notices and obtaining relevant consents as required by Data Protection Laws. To the extent necessary, the parties shall (i) collaborate with respect to requests from Data Subjects, and (ii) each party shall implement appropriate technical and organizational measures which prevent accidental or unlawful destruction and loss, alteration, unauthorized disclosure of, or access to Personal Data. The parties shall each maintain and display on their respective websites an easily accessible and discoverable privacy policy that (i) discloses the use of any cookies (based on redirects or otherwise) through the Service, and (ii) includes relevant details regarding each party's security controls and international transfers. The terms "Data Subject", "Personal Data", "Personal Data Breach" and "Controller" shall have the meanings stated in the GDPR.

## 9. Indemnification

9.1 Each party shall defend, indemnify and hold harmless the other party and its respective agents, affiliates, subsidiaries, directors, officers, employees, contractors and Network partners (as applicable), against any and all third party claims resulting from the breach of such party's duties, obligations and representations under the Agreement.

9.2 In connection with any such claim: (i) the indemnified party shall provide prompt written notice to the indemnifying party of any such claim (provided that the failure to provide such prompt notice shall not relieve the indemnifying party of its indemnification obligations in the Agreement, except to the extent it has been damaged thereby); (ii) the indemnifying party shall have sole control of the defense or settlement of the claim (provided that the indemnifying party may not enter into any settlement that may adversely affect the rights or obligations of the indemnified party without the indemnified party's prior written consent); (iii) at the indemnifying party's request and expense, the indemnified party cooperating in the investigation and defense of such claim; and (iv) the indemnified party shall have the right to participate in its defense with counsel of its own choosing at the indemnified party's expense.

## 10. Limitation of Liability

10.1 Nothing in the Agreement excludes or limits either party's liability: (i) for death or personal injury resulting from the negligence of either party or their servants, agents or employees; (ii) for fraud or fraudulent misrepresentation; (iii) for anything which cannot be excluded or limited by law.

10.2 Except with respect to claims arising from the indemnity obligations or a breach of clause 6 (confidentiality), data protection provisions, and/or non-payment of fees owed, the maximum aggregate liability of either party and its' directors, officers, employees, Network partners, vendors or agents arising from any given event or series of connected events arising under or related in any way to this Agreement or its implementation shall be limited to the greater of: (i) £50,000; and (ii) 100% of the amount of fees paid or payable by Customer under Agreement in the 12 months immediately preceding the month in which the event (or first in a series of connected events) occurred.

10.3 In no event shall either party be liable for: (i) loss of revenues; (ii) loss of profits; (iii) loss of contracts; (iv) loss of business or anticipated savings; (v) loss of data; (vi) loss of goodwill or reputation; or (vii) for any consequential, special or indirect losses whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by

that party arising out of or in connection with the provisions of, or any matter under, this Agreement.

## 11. Miscellaneous

11.1 Neither Party may assign the Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other; provided, however that either party may assign its rights or delegate its duties under the Agreement, in whole or in part, without the other's consent, in connection with a merger, reorganisation or sale of all, or substantially all, of the assignor's assets, provided that the successor entity shall have sufficient resources to fully perform the Agreement and shall assume the obligation to fully perform the Agreement.

11.2 This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or connected with this Agreement. The prevailing party in any action arising out of or to enforce this Agreement shall be entitled to recover its reasonable legal fees and costs.

11.3 No press releases or general public announcements shall be made without the mutual written consent of Customer and Outbrain. Outbrain shall have the right to include Customer's name on Outbrain's client list and in other marketing materials. Customer shall not use Outbrain's name, logo or trademark without Outbrain's prior written consent.

11.4 All notices under the Agreement will be in writing and will be delivered by personal service, confirmed by email, express courier, or certified mail, return receipt requested, to the address of the receiving party set forth on the IO, or at such different address as may be designated by such party by written notice to the other party from time to time. Notice will be effective on receipt.

11.5 No failure of either party to enforce any of its rights under the Agreement will act as a waiver of such rights. If one or more provisions of the Agreement are held to be unenforceable under Applicable Laws, then such provision(s) shall be excluded from the Agreement, and the balance of the Agreement shall be enforceable in accordance with its terms.

11.6 Neither party shall be liable for any delay or failure to perform any of its obligations set forth in the Agreement due to causes beyond its reasonable control. Neither party shall be liable for any unavailability or inoperability of the Internet, technical malfunction, or computer error or corruption resulting in loss of data or other harm.

11.7 Sections 6, 8, 9, 10 and 11, together with any outstanding undisputed payment obligation, shall survive the termination of the Agreement.

11.8 Customer and Outbrain shall each act as independent contractors. Nothing in the Agreement shall be deemed or create or construed as creating a joint venture or partnership between the parties.

11.9 The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and may not be modified without the prior written consent of both parties. In no event shall any inconsistent or conflicting terms and conditions contained in any purchase order, insertion order, invoice or other document submitted by Customer concerning the subject matter hereof have any force or effect even if accepted or signed by Outbrain.