

The following terms ("Terms") govern Outbrain and Partner's participation in a Unified Auction for Partner Inventory facilitated through one or more Unified Auction Service as defined in a Header Bidding Enrollment Form.

## **1. CERTAIN DEFINITIONS**

- a. "Advertising Client(s)" means advertisers, agencies or other third-party sources of advertising demand.
- b. "Advertiser Recs" means Recommendations in the Outbrain network submitted by Advertising Clients.
- c. "Content" means graphical, textual and/or auditory content (which may include text, data, information, photos, images, graphics, audio, video or other content).
- d. "Data" means all data collected or generated by Outbrain through the Unified Auction Service, including any reports or other data made available to Partner in connection with the Agreement.
- e. "Destination Page" means any webpage or other online location that may be accessed by clicking on Recommendations.
- f. "End User" means individual human end users of Partner Inventory.
- g. "Partner Inventory" means inventory appearing on the Partner websites applications or platforms, as may be made available to Outbrain by Partner through a Unified Auction Service and in any particular Unified Auction.
- h. "Recommendations" means the display of Content that Outbrain delivers to Partner Inventory via the Unified Auction Service. For clarity, Recommendations may include Advertiser Recs
- i. "Unified Auction" means any programmatic auction for Partner Inventory that occurs within any Unified Auction Service in which Outbrain participates.
- j. "Unified Auction Service" means a service or integration, which may be operated by a third party, that facilitates a programmatic auction, wherein programmatic supply-side partners and other programmatic buyers' bid for Partner Inventory on behalf of Advertising Clients.

## **2. REVENUE & PAYMENT**

- a. 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.

- b. 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.
- c. Outbrain may withhold, set off, charge or credit back payments to Partner, 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 by the Advertiser Client. 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; and (iii) clicks/impressions co-mingled with a significant amount of the activity described in (i and ii) above.
- d. 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 Advertiser Client whose Advertiser Recs are displayed on any Partner Inventory defaults on payment to Outbrain, Outbrain may withhold payment or charge back Partner's account.

### **3. PRIVACY**

- a. 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 and use data in connection with the Partner Inventory. Outbrain's privacy policy is available [athere](#).

- b. The parties are independent controllers in respect of End User data processed via the Partner Inventory and each party remains individually responsible for compliance with relevant data protection laws. It is Partner's (and not Outbrain's) responsibility to comply with all data protection legislation in respect of the placing and use of third party cookies and the capturing of any consent to cookies required to be obtained from the relevant End User). Partner acknowledges that Outbrain relies on Partner's lawful basis for processing End User data. Accordingly, Partner warrants that: (i) if Publisher relies on legitimate interest, it has completed a legitimate interest assessment which has considered Outbrain's provision of the Outbrain Service; and (ii) if the Publisher relies on consent, the Publisher shall disclose Outbrain to an End User via a consent management platform (if applicable) using the IAB methodology and pass Outbrain a clear consent or no consent signal (i.e., the Publisher must not send Outbrain a null or invalid signal via a consent management platform). Publisher shall collect the consent string (if relying on consent) according to the IAB methodology and make it available to Outbrain as an object in any bid request. Regardless of the foregoing, the parties shall provide End Users access to a user-choice mechanism such as the opt out page(s) of the Network Advertising Initiative, the Digital Advertising Alliance, the European Digital Advertising Alliance, and/or a direct opt out of Outbrain through Outbrain's privacy policy. If an End User has opted out of behavioral advertising through a mechanism alerting Publisher (instead of Outbrain), such as device settings, Publisher must not pass Outbrain such End User's advertiser ID or other identifying mechanism. The provisions of the Data Processing Agreement shall be incorporated into, and form part of, this Agreement.

#### **4. 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, non-transferable licence to display the Recommendations on Partner Inventory in the form and format provided.
- b. 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"), 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 Partner Inventory in any general listing of advertisers or partners (including in marketing

and sales materials). 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, Data, and Content displayed on or made available by the Unified Auction Service (excluding any Content from the Partner Inventory which shall be owned by Partner); and (b) Partner retains all right, title and interest in and to the Partner Inventory including the look and feel, excluding the items described in subparagraph (a) above, (including without limitation all intellectual property rights in them).
- d. 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.

## **5. PROHIBITED ACTIVITY**

Partner will not deploy Advertiser Recs 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 or is directed at children under of the age of 16.

- a. 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.

## **6. TERMINATION**

- a. 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.
- b. The Agreement is terminable on thirty (30) days prior written notice unless otherwise stated on the Partner Enrollment Form. Upon expiration or termination of the Agreement, all rights and obligations of the parties under the Agreement will be extinguished, except that Sections 8, 9 & 11 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.

## **7. 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. Partner represents and warrants that the Partner Inventory does 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, libelous, 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.
- c. 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.
- d. Except as expressly provided in the Agreement, neither party makes any representations or warranties, express or implied in relation to the Agreement, the Partner Inventory, any Content made available by Outbrain 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).
- e. Outbrain makes no representations or warranties concerning any Content, including without limitation Advertiser Recs, and Outbrain will not be responsible or liable for the contents, accuracy, intellectual property infringement, legality or decency of or for Partner's reliance on any of the foregoing.
- f. 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.

## 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 (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 7. 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**

- 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).

**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 Unified Auction Service in violation of any such restrictions, laws or regulations. 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.

**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 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 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, 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.