

The following terms (“**Terms**”) govern Partner’s participation an auction to purchase certain digital advertising space or placements made available on Outbrain’s proprietary exchange or marketplace as defined in an Enrollment Form.

## 1. Service

1. *Access to the Service.* Demand Partner will use the Services only for its own use or for an advertiser or direct agent with which Demand Partner has a direct relationship (“**DP Client**”). During the Term, Outbrain grants Demand Partner a non-exclusive, non-transferable, limited license to access and use the Service as reasonably necessary for Demand Partner’s normal use of the Service on a self-serve basis, in particular, for the purposes of bidding on and purchasing Partner Inventory on an ‘auction’ basis. Notwithstanding the foregoing, Outbrain, in its sole discretion, shall determine what percentage of its Partner Inventory to permit DP to bid on and to allocate to the Service generally. Outbrain owns all right, title, and interest in and to the Service. Aside from the limited rights and licenses expressly granted hereunder, no other license is granted.
2. *Ads.* Demand Partner has the right and authorizes Outbrain to place its, or DP Client’s, ads on the Partner Inventory, and is solely responsible for determining the propriety and legality of the ads (which includes all elements of the ad, including the photograph and headline). Ads must comply with Outbrain’s Advertising Guidelines (available at <https://www.outbrain.com/advertisers/guidelines/>). Outbrain may at any time for any or no reason reject or remove any ad. Demand Partner shall not, directly or indirectly, provide an ad 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, ads shall neither (a) redirect to a destination other than as originally submitted to the Service, and/or (b) be substantively different from the ad originally submitted to the Service.
3. *3rd Party Targeting.* When utilizes third party segments for enhanced targeting of its campaign. If Partner uses 3rd Party Targeting of its campaign(s), Partner shall pay for its use above mentioned including any applicable taxes. If Partner utilizes 3rd Party Targeting the Partner 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 ((iii) disclose to it’s users that he may place third party pixels or tags (“the “**Third Party Pixels**”) for the purpose of providing analytics related to 3rd Party Targeting functionality. Partner represents and warrants that (a) its use of the Third Party 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 (1) that third parties, including Outbrain, may use cookies or similar technologies to collect or receive information from Partner’s website(s), and may use that information to provide measurement services and target ads; and (2) as to how users opt-out of the collection of information for targeting purposes.
4. *Beta Features.* During the Term, Outbrain may offer Demand Partner the right to use certain experimental features that are made available to Demand Partner by Outbrain on a test basis (“**Beta Features**”). All Beta Features are provided on an “as is” basis, without any representations, warranties, covenants or obligations of any kind. Any use by Demand Partner of Beta Features is solely at Demand Partner’s own risk. Outbrain may modify or remove any Beta Features at any time.
5. *Reporting.* All Demand Partner-trafficked ads will be counted as impressions. Outbrain’s final monthly reports of impressions will provide the conclusive basis for Outbrain’s calculation of the Fees (defined below) owed by Demand Partner. If there is a 5% discrepancy or more between Demand Partner’s reporting and Outbrain’s, 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 5%, Outbrain’s numbers shall be conclusive. If Outbrain’s reporting in a given day varies by more than 5% in comparison to Demand Partner’s reporting, and Demand Partner notifies Outbrain of this in writing (email shall suffice), then the parties shall make all best efforts to solve the discrepancy as follows within 3 business days thereafter:(a) Outbrain and Demand Partner shall exchange reporting data in good faith in order to find the source of the discrepancy; (b) Outbrain shall stop sending bid requests and/or Demand Partner will stop bidding on that portion of supply where the Parties have agreed via

email there is a discrepancy;(c) Based on the findings regarding the cause of such discrepancy it will be decided between the parties whether an amount should be waived. In case Demand Partner and Outbrain do not reach an agreement, Demand Partner may ultimately dispute the amount in question in accordance with this Section. For the avoidance of doubt, Demand Partner shall not allowed to withhold any non-disputed amounts.

6. *Limitations.* Outbrain does not guarantee: (a) the placement, positioning or the timing of delivery of any ads, (b) impressions or clicks on any ads, or (c) conversions. In no event shall Outbrain be liable for failure to provide any of the foregoing.
7. *Prohibitions.* Demand Partner will not (a) attempt to circumvent any Outbrain security measure, (b) share its Service user interface login or otherwise grant account access with any third party without the express permission of Outbrain, (c) reproduce, distribute, modify, prepare derivative works of, translate, reverse engineer, reverse compile or disassemble any Outbrain-provided tag, or any portion of the Service, (d) use or authorize the use of the Service for any purpose not permitted under this Agreement, (e) copy, sell, transfer, lease, lend, syndicate, or sub-syndicate the Service, or use the Service for co-branding, timesharing, arbitrage (e.g., reselling), service bureau or other unauthorized purposes, (f) utilize rotating ad tags or otherwise violate Outbrain's Advertising Guidelines (g) import into the Service any personally identifiable information including by using Outbrain's ad tags or pixels, or (h) distribute viruses or other malware (through the ads or any other mechanism). Outbrain may immediately suspend Demand Partner's access or terminate this Agreement upon any breach by Demand Partner of this [Section 1.8](#). Under no circumstances may Demand Partner use the Services for gathering competitive intelligence. To the extent that Outbrain provides the name and/or section of a name of the website related to Partner Inventory, Demand Partner shall not use such information (i) as its primary bidding criteria (e.g., Demand Partner will bid on a user based on what Demand Partner knows about such user, and only use the website name as secondary information informing the bid price), and (ii) to build a "segment" of users of a particular website or group of websites such that the group associated with a particular website, section of the website or general interest areas of a website (e.g., Demand Partner may not create an "ESPN Audience" or "sport fans" segment based on any information obtained by using the Service).

## 2. Compliance, Privacy and Data

2.1 *Compliance* Demand Partner will, and will require DP Clients, to (i) follow the Notice and Choice Provisions of the NAI Principles found at [www.networkadvertising.org](http://www.networkadvertising.org), and (ii) publish and comply with a legally sufficient privacy policy that fulfills the requirements of the DAA Self-Governing Principles found at [aboutads.info](http://aboutads.info). Demand Partner must place the AdChoice icon (or a similar icon) on each ad displayed on the Partner Inventory. Such icon must link directly to the Demand Partner and/or DP Clients' opt out functionality (or the NAI global opt out). Demand Partner shall ensure that its collection, storage and use of all user data (including any tracking and analytics used), whether conducted through the Service or otherwise, is strictly in compliance with all applicable laws, including any local law requirements related to use of IP addresses, behavioral information and /or COPPA.

2.2 *Data.* Any data provided by Outbrain to Demand Partner, or collected directly by Demand Partner through its use of the Service shall belong to Outbrain ("[Outbrain Data](#)"). Demand Partner has a limited license to use the Outbrain Data only in compliance with this Agreement and for its internal use and reporting to DP Clients, provided, that each such client agrees in writing to Demand Partner that such reporting may be used for its own internal purposes. For clarity, any collection of data by Demand Partner regarding a user's interaction with a particular website of the Partner Inventory shall not be disclosed, sold, or otherwise transferred to any third party for any purpose.

2.3 *No PII.* In no event will Demand Partner (a) import any personally identifiable information into the Service, including by using Outbrain's pixels to gather such information, and (b) combine any Outbrain Data with any personally identifiable information.

## 3. Fees and Payment Terms

3.1 Demand Partner shall pay Outbrain fees (based on the number of ad impressions, as measured by Outbrain's tracking system and any applicable taxes ("Fees") within thirty (30) days of receipt of Outbrain's invoice. If Demand Partner chooses to pay its invoice via credit card, a three percent (3%) convenience fee shall be added to the Fees.

3.2 If payment is not made when due, Outbrain may charge interest at the rate of 2% per month (or the maximum allowed by law, whichever is lower) from the due date until the date of actual payment, whether before or after judgment. Outbrain also reserves the right to suspend or terminate Demand Partner's use of the Service until Demand Partner has paid all amounts due and to charge Demand Partner for all costs of collection, including collection agency and reasonable legal fees and court costs. Demand Partner authorizes Outbrain to investigate Demand Partner's credit record. If applicable, Demand Partner 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. Demand Partner acknowledges and agrees that any account, credit card and related billing and payment information which Demand Partner 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 Demand Partner's account.

3.3 All payments due under this Agreement shall be made without setoff or deduction, including for or on account of any present or future tax, assessment, or other governmental charge ("Taxes") imposed upon such payment by any state, country, political subdivision or taxing authority thereof or therein. If Demand Partner shall at any time be required by law to withhold any Taxes from any payment to Outbrain, Demand Partner will pay as additional amounts to Outbrain such amounts as may be necessary so that every net payment to Outbrain after withholding for or on account of any Taxes will not be less than the amount required under this Agreement then due and payable. Demand Partner shall notify Outbrain of any disputes or discrepancies in writing within 30 days of receipt of invoice, after such time the invoice shall be final, and all disputes or discrepancies waived.

#### **4. Term and Cancellation**

Either party may terminate this Agreement at any time in the event of a breach by the other party of any material provision of this Agreement that remains uncured ten (10) days after the breaching party's receipt of written notice of the breach. Upon expiration or termination of this Agreement, all rights and obligations of the parties under this Agreement will be extinguished, except that Sections 6, 8, 9 and 10, together with any outstanding payment obligation, will survive and continue to bind the parties in accordance with their terms.

#### **5. Additional Representations and Warranties/Disclaimers**

5.1 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 licenses under the Agreement; and (ii) the execution or acceptance of the Agreement, 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.

5.2 Demand Partner further represents and warrants that: (i) the ads it submits, uploads and/or runs through the Service do 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 this 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 ads; (iii) use of the ad in accordance with the Agreement will not infringe any intellectual property rights of any third party; and (iv) 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. Outbrain may immediately suspend any campaign or Demand Partner's use of the Services if Demand Partner violates this Section 5.

5.3 If the ads have been provided to Demand Partner by a third party, Demand Partner represents and warrants that: (i) it is the authorized agent of the provider of the ad; (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 ad; (iii) it has entered into a written agreement granting the agent the authority to represent the provider of the ad in accordance with (i) and (ii) above (and shall submit such agreement to Outbrain upon request). (iii) it shall comply with Applicable Laws and "Applicable Laws" means any applicable federal, national, 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).

5.4 EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE AGREEMENT, OUTBRAIN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR

FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE ABOUT ITS SERVICES AND THE PERFORMANCE OR SUCCESS OF ANY CAMPAIGNS MADE BY IT ON BEHALF OF DEMAND PARTNER, OR THAT THE SERVICE WILL OPERATE UNINTERRUPTED, SECURE OR ERROR FREE.

## **6. Indemnification**

6.1 Each party shall defend, indemnify and hold harmless the other party and its respective agents, affiliates, subsidiaries, directors, officers, employees, contractors, and Inventory 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.

6.2 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.

## **7. Limitation of Liability**

EXCEPT WITH RESPECT TO CLAIMS ARISING FROM A PARTY'S INDEMNITY OBLIGATIONS, WILLFUL MISCONDUCT, BREACH OF SECTION 2, AND/OR NON-PAYMENT OF FEES OWED IN THE AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, VENDORS, NETWORK PARTNERS OR AGENTS FOR ANY ACTION REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN TORT OR CONTRACT, ARISING UNDER OR RELATED IN ANY WAY TO THE AGREEMENT OR ITS IMPLEMENTATION SHALL BE LIMITED TO THE GREATER OF: (I) THE AMOUNT OF FEES PAYABLE BY DEMAND PARTNER UNDER THE AGREEMENT IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM; AND (II) \$500,000. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR OTHER DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST REVENUES OR LOST PROFITS, ARISING OUT OF OR RELATED IN ANY WAY TO THE AGREEMENT OR ITS IMPLEMENTATION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, DEMAND PARTNER ACKNOWLEDGES THAT OUTBRAIN IS NOT LIABLE FOR TRANSACTIONS EXECUTED WITHIN THE SERVICE AS A RESULT OF ERRORS MADE IN ENTERING INFORMATION INTO THE OUTBRAIN USER INTERFACE BY DEMAND PARTNER, INCLUDING INCORRECT PRICING, TARGETING OR BUDGETING INFORMATION. NOTWITHSTANDING ALL OF THE FOREGOING, NOTHING HEREIN SHALL LIMIT DEMAND PARTNER'S OBLIGATION TO PAY THE FEES. OUTBRAIN IS NOT LIABLE FOR ANY OUTAGES OR DOWNTIME OF THE SERVICE.

## **8. Intellectual Property Rights.**

Each party acknowledges and agrees that each party has the exclusive right, title, and interest in and to all of their respective trademarks, trade names, service marks, logos, program and event names, identifications, and other proprietary rights and privileges ("**Intellectual Property**"). This Agreement and its various provisions are not a license or assignment of any right, title, or interest in either party's Intellectual Property by or to the other party. Neither party may, in any manner, represent that it has any ownership or other interest in the other party's Intellectual Property. Neither party may do or cause to be done anything that impairs the other party's exclusive license in its Intellectual Property. Neither party may use, print, or duplicate the Intellectual Property of the other party unless prior written approval has been obtained from the other party. Any permitted use by one party of the Intellectual Property of the other party is limited to the term of this Agreement. Upon the termination of this Agreement, or upon request of either party, the other party must immediately cease all use of the applicable Intellectual Property and shall promptly return all materials to requesting party. Neither party may assign or attempt to assign any rights with regard to the other party's Intellectual Property that arise under this Agreement and any such attempted assignment is void.

## **9. Confidentiality**

9.1 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.

9.2 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 Demand Partner with any holding company of Demand Partner or with any subsidiary company of Demand Partner's holding company.

## **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 represents 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.