

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

### **1. SSP's Services.**

1.1 **SSP's Services.** SSP will provide the following services to Outbrain (collectively the "**Services**"): (a) SSP will customize and implement an online advertising exchange (the "**Exchange**") that performs in accordance with the functional specifications, which Exchange shall allow Outbrain to purchase impression inventory delivered by the Exchange ("**Deliverables**") in near real time by bidding on the impression inventory; (b) SSP will host the Exchange; (c) SSP will provide maintenance services for the Exchange; and (d) its Services and, as necessary SSP will provide customization and support services, including reasonable education and support, during normal business hours, to Outbrain.

1.2 **License Grant.** Subject to the terms of this Agreement, SSP hereby grants Outbrain a non-exclusive, non-transferable right to access and use the Services. Outbrain agrees that it will not: (a) resell, license, lease, time-share, distribute or otherwise transfer to any third party its right to access and use the Services, (b) reverse engineer, decompile or disassemble the Services, (c) modify, copy or create derivative works of Services (or any part thereof), or (d) access or use Services for the purpose of building a competitive product or service or copying its features or user interface or authorize or permit a direct competitor to do so.

1.3 **SSP's Ownership.** SSP retains all right, title, and interest in and to the Services and Exchange, including all patent rights, copyrights, trademarks, trade secrets, know-how and any other proprietary rights recognized in any jurisdiction, including registrations, applications, renewals and extensions thereof. (the "**Intellectual Property Rights**"), Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, licence, sale, or other rights upon SSP or Outbrain (as applicable) by implication, estoppel or otherwise, as to any Intellectual Property Rights of the other party or any third party

1.4 **Acceptance.** The Exchange shall conform to the OpenRTB Native 2.3 (or higher) standard and Functional Specifications (as defined on the Order Form). Within ten (10) business days from the time SSP delivers the Exchange to Outbrain, Outbrain will review, test (including in respect of functionality, performance, and usability) and either approve or reject the Exchange. Outbrain will provide the relevant reasons for any rejection, suggesting modifications as appropriate, on an iterative basis, and SSP will correct and re-deliver the Exchange until it is in a form acceptable to Outbrain. In the event that the Exchange does not meet Outbrain's final reasonable approval at least one (1) day prior to the launch date, either party may (without incurring any liability) terminate this Agreement upon written notice to the other party.

2. **Outbrain's Client's Advertising Materials.** SSP acknowledges and agrees that it does not have any rights or title to any of the intellectual property rights contained in Outbrain's clients' advertising materials, except for the right to display the Outbrain's clients' advertisements on the websites in accordance with this Agreement and SSP agrees that it will not use the advertising materials for any other purpose. Further, SSP may not alter the advertising materials in any way.

### **3. Payment.**

3.1 **Payment Terms.** Outbrain will pay SSP in accordance with this Agreement and as set forth on the Order Form. All payments are in US dollars. All payments under this Agreement will be in accordance with Outbrain's measurements. Outbrain will pay SSP within sixty (60) business days of the end of each calendar month. If there is any disagreement with respect to any discrepancies related to the payment to SSP hereunder, the parties agree to work in good faith to resolve the dispute. Any dispute regarding a payment from Outbrain must be submitted to Outbrain in writing within thirty (30) days of postage or wire transfer date of such payment or it shall be deemed waived.

3.2 **Payment Liability.** Unless otherwise set forth elsewhere, SSP agrees to hold Outbrain liable for payments solely to the extent proceeds have cleared from client to Outbrain for Fees incurred by bidding. For sums not cleared to Outbrain, SSP agrees to hold client solely liable. Outbrain agrees to make reasonable effort to collect and clear payment from client(s) on a timely basis. SSP hereby acknowledges and agrees that Outbrain shall have the right to set-off or withhold all amounts due by SSP to Outbrain or any of its Affiliates, from any amount payable by Outbrain or Affiliates to SSP.

3.3 Taxes. For purposes of this Agreement, "Taxes" shall mean all federal, state, local, foreign and other net income, gross income, gross receipts, sales, purchase, use, ad valorem, value added, goods and services, harmonized sales, transfer, franchise, profits, withholding, payroll, excise, stamp, real or personal property, customs, duties or other taxes, fees, levies, assessments or charges of any kind whatsoever, including any related penalties and interest, imposed by any federal, territorial, state, local, or foreign government or any agency or political subdivision of any such government. Outbrain is solely responsible for the payment of all Taxes associated with its use of the Services and SSP is solely responsible for the payment of all Taxes associated with any payments made by Outbrain to SSP under the terms of this Agreement.

3.4 Fraudulent Activity. Each party agrees that it will not, and will not authorize or encourage any third party to, directly or indirectly generate impressions, click-throughs, conversions, cloaked inventory, and/or other actions with respect to the Services or Exchange through any automated, deceptive, fraudulent, or otherwise invalid means, including through repeated manual clicks, the use of "robots," or other automated tools, or rendering or placing ads in a way to achieve excessive amount of accidental click-throughs ("**Fraudulent Activity**"). If Outbrain suspects Fraudulent Activity, then Outbrain shall notify SSP via email that it suspects Fraudulent Activity and Outbrain, in its sole discretion, may withhold, setoff or charge back payment to SSP. In addition, SSP will promptly notify Outbrain of any actual or suspected Fraudulent Activity and cooperate with Outbrain in good faith to investigate, prevent and remedy any Fraudulent Activity.

#### 4. Term and Termination.

4.1 Termination for breach. Either Party may terminate this Agreement if the other party breaches this Agreement; provided that (a) the non-breaching Party provides the breaching Party written notice of such breach and (b) the breaching party fails to cure such breach within seven (7) days of such notice.

4.2 Effect of Termination. Upon termination of the Term of this Agreement, Outbrain's access to the Services shall cease and SSP shall not be under any further obligation to provide the Services under the terms of this Agreement. Outbrain shall pay SSP any undisputed fees owed to SSP within sixty (60) business days from the date of termination. Sections 1-3, 4.4 and 5-8 and 10.1 shall survive the termination of this Agreement. Within thirty (30) days of any termination or expiration of this Agreement, each party will return to the other party or destroy all Confidential Information of the other party.

#### 5. Data Protection.

5.1 The parties are each a controller and/or a business in respect of end user data collected and processed via the Services and each party shall comply with all relevant provisions of data protection laws as it applies to matters under the Agreement and ensure that they process data fairly and lawfully in the provision and receipt of personal data. Each party remains individually responsible for compliance with relevant data protection laws and transparency obligations, provided however, that SSP shall have all contractual commitments in place with its publishers requiring them to comply with all data protection legislation in respect of the capturing of any consent to cookies required to be obtained from the relevant end user and any notices regarding the placing and use of third-party cookies upon which the Services relies.

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

5.3 Outbrain and SSP 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 SSP, that discloses (and as applicable, require its own partners to disclose) usage of third-party technology to collect, use and share data for the purpose of providing the Services. Outbrain's Privacy Policy is available at <http://www.outbrain.com/privacy>.

5.4 Requests from end users relating to the processing of personal data carried out by Outbrain can be exercised directly from Outbrain Interest Profile at <https://my.outbrain.com/recommendations-settings/home>.

5.5 The provisions of the SSP Data Sharing Agreement at <https://www.outbrain.com/legal#ssp-dsa> shall be fully incorporated into, and form part of, this Agreement.

#### 6. SSP's Representations and Warranties.

6.1 SSP represents and warrants that:

6.1.1 SSP is an entity duly organized, validly existing and in good standing under the laws of its state of domicile (as listed on the Order Form).

6.1.2 SSP (i) has the full right and authority to enter and perform this Agreement; (ii) the execution, consent or acknowledgment of no other party is necessary in order to validate SSP's entry into and performance of this Agreement; (iii) SSP's entry into and performance of this Agreement does not violate any agreement binding on SSP; and (iv) this Agreement is a legal, valid, binding and enforceable obligation of SSP.

6.1.3 Nothing in the Services or Exchange infringes any intellectual property (copyright, author's rights, trademark, etc.), personal right (right of privacy, right of publicity, defamation, etc.) or other proprietary right of any person nor do the Services or Exchange violate any local, state or federal law of the United States or any applicable international jurisdiction.

6.1.4 SSP will use commercially reasonable efforts to provide the Services according to the terms of this Agreement; and

6.1.5 SSP shall ensure that it and its publisher partners comply with the [Outbrain Publisher Guidelines](#). SSP shall not place ads and it will not allow to place ads from Outbrain by injecting them into third party web pages or apps through browser extensions, injection proxies or other similar mechanisms.

6.1.6 SSP has all necessary rights and permissions to grant licenses in the Services to Outbrain.

6.1.7 SSP and SSP's publisher partners comply and will continue to comply during the term of this agreement with all applicable laws, regulations and industry self-regulatory guidelines SSP represents and warrants that the SSP 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, libellous, slanderous material or material that violates any person's right of publicity, privacy or personality; or (iv) knowingly contains a misrepresentation of fact or factual inaccuracy

6.1.8 Neither party to this Agreement has made any representations or warranties to the other except as expressly set forth in this Agreement.

**7. Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH HEREOF (INCLUDING FOR LOSS OF DATA OR PROFITS, 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, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH HEREOF (WHETHER UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE), EXCEED THE FEES ACTUALLY RECEIVED BY SSP FOR THE APPLICABLE SERVICE UNDER THIS AGREEMENT OR RELATING TO ANY SUBJECT MATTER OF THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGES.

## **8. Indemnification.**

8.1 SSP hereby agrees to defend, indemnify and hold harmless Outbrain, its advertising clients, and their respective officers, directors, agents and employees from any and all liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of claims, actions, suits or proceedings relating to or arising out of: (i) any breach (or, as to defence obligations only, alleged breach) by SSP of any term, condition, representation or warranty under this Agreement; (ii) the websites used by SSP in providing the Services and the Exchange; (iii) Outbrain's use of the Services or Exchange; (iv) the infringement of the Exchange or the Services, or on the intellectual property right of a third party.

8.2 Outbrain hereby agrees to defend, indemnify and hold harmless SSP and its officers, directors from any liabilities damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any third-party suits or proceedings relating to or arising out of Outbrain's gross negligence, wilful misconduct or fraudulent actions.

8.3 Any claim for indemnification hereunder shall be subject to the following provisions: (i) the indemnifying party shall be given prompt written notice of the claim by the indemnified party, provided that any delay in providing notice shall not relieve the

indemnifying party of its indemnity obligations under this Agreement unless, and only to the extent, the indemnifying party was prejudiced by the delay; (ii) the indemnifying party shall have the right to control the defence and all negotiations relative to the settlement of any such claim, provided that it diligently undertakes such defence and that no settlement admitting liability on the part of the indemnified party or limiting the indemnified party's rights hereunder may be made without the express written consent of the indemnified party; and (iii) the indemnified party shall reasonably cooperate with the indemnifying party and its counsel at the indemnifying party's cost and expense.

## 9. **Maintenance and Upgrades.**

9.1 **Updates, Upgrades.** SSP shall provide Outbrain, without any further charge to Outbrain, all updates (comprising general bug fixes and minor enhancements) and upgrades (comprising enhancements and major functionality changes) for the Services or Exchange reflecting improvements made to the underlying technology upon the implementation of such updates and upgrades to the Services or Exchange.

9.2 **Maintenance.** SSP may occasionally be required to suspend the Services or Exchange to provide maintenance services. SSP shall provide Outbrain with no less than ten (10) business days advanced written notice of any such suspension.

## 10. **General Provisions.**

10.1 **Confidentiality.** Both parties agree that they will hold in strictest confidence and will not use or disclose to any third party, any confidential information disclosed by the other party. For purposes of this Agreement, "confidential information" shall mean all non-public information that a party designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, the terms and conditions of this Agreement, information relating to released or unreleased Outbrain technology (software and hardware products), marketing or promotion materials related to Outbrain's technology, products or services or customers or suppliers of Outbrain and SSP's Services. "Confidential Information" shall not include information that was known to either party prior to the disclosure by the other party, information that becomes publicly available through no fault of any party or information that was independently developed by either party.

10.2 **Notices.** All notices, requests, demands and other communication given or required to be given hereunder shall be by email and duly addressed to the parties as set forth on the Order Form. Delivery of notice by email shall be deemed made on the date of delivery. Any party may change its address or telecopy number for notice purposes by giving notice to the other party.

10.3 **Severability.** If any provision of this Agreement or its application to any party or circumstance is held invalid or unenforceable, then the remainder of this Agreement and the affected provision to the extent it is not held shall remain valid and enforceable and in full force and effect.

10.4 **No Partnership.** This Agreement shall not be construed as creating a partnership or joint venture between Outbrain or SSP or between either of them and any third party or cause either of them to be responsible in any manner for the other's or any third party's debts or obligations, including to any employees.

10.5 **No Waiver.** A waiver by either party of a default by the other party or of any right hereunder shall be effective only if it is in a writing signed by the waiving party and shall not be construed as a waiver of any other default or right, whether similar or dissimilar.

10.6 **Transfer.** Neither party may sell, assign, or otherwise transfer, or attempt to sell, assign or otherwise transfer, all or any portion of its rights or obligations under or otherwise in connection with this Agreement without the prior written consent of the other; provided, however, the foregoing prohibition shall not apply to any sale of all or substantially all of one party's assets or any merger or reorganisation to which consent of the other Party is not required.

10.7 **Counterparts.** This Agreement may be executed in counterparts, all of which shall constitute one instrument. Facsimile copies and electronic copies of this Agreement are acceptable as original copies.

10.8 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed under applicable laws of England and Wales, excluding any conflict of law provisions. Outbrain and SSP irrevocably consent to the exclusive jurisdiction of any England and Wales, over any suit, action or proceeding arising out of or relating to this Agreement.

10.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Outbrain and SSP and their permitted successors and assigns.

10.10 Survival. Rights and obligations under this Agreement, which by their nature should survive, will remain in effect after the termination or expiration of this Agreement.

10.11 Entire Agreement; Amendments. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing, which is signed by the parties hereto or their respective permitted successors-