

## ADVERTISER SERVICES AGREEMENT

### - First Impression -

ENGAGE provides use of its proprietary real-time trading technology platform to ADVERTISER to enable ADVERTISER to bid in real-time, in an auction-like format for the purchase of ad inventory ("*Inventory*") on websites and other media made available by online publishers that ENGAGE has a relationship with (such real-time trading technology platform referred to herein as the ("*RTB Platform*").

These terms and conditions (the "Agreement") entered into between you ("ADVERTISER") and Engage BDR, Inc. ("ENGAGE"), (singularly referred to as "Party", or collectively referred to as "Parties" ), along with any accompanying Insertion Order ("IO"), govern the use of the website located at <http://first-impression.com> ("Website") and the products and services contained therein, including the RTB Platform. Use of Website constitutes consent to be bound by the terms and conditions of this Agreement. In the event of a conflict between this Agreement and any IO executed by the Parties, the terms of the IO shall control.

#### 1. Use of Services.

1.1. Access to Services. Subject to the terms and conditions of this Agreement and any policies established by ENGAGE, from time to time, incorporated by reference in this Agreement, ENGAGE hereby makes available to ADVERTISER access to the Website and RTB Platform (collectively referred to as "*Services*"). ADVERTISER is hereby granted a revocable royalty-free, non-exclusive, non-transferable, non-sublicensable, non-assignable right to use Services for the purposes contemplated under this Agreement, including bidding on and purchasing Ad Inventory for the display of advertising content ("*Ad Content*" or "*Ads*"). ADVERTISER shall not use Services except pursuant to the limited rights expressly granted and specifically set forth in this Agreement, and ENGAGE reserves all rights not explicitly granted herein.

1.2. Login Credentials. ENGAGE will provide ADVERTISER with a user name and password ("*Login Credentials*") upon registration of a user account ("*Account*"). Login Credentials are necessary to access the Services. ADVERTISER is responsible for protecting Login Credentials from third parties unauthorized to access Services and covenants to take all measures to prevent unauthorized access. ADVERTISER will be solely responsible for any unauthorized usage. If Account becomes compromised or is used in an unauthorized manner, ADVERTISER must immediately notify ENGAGE.

ENGAGE reserves, in its sole discretion, the right to immediately revoke Login Credentials upon the occurrence of any of the following events: i) ADVERTISER shares with or allows use of Login Credentials by unauthorized third party, or ii) the security of Login Credentials become compromised, or iii) ADVERTISER violates any term of this Agreement. ADVERTISER's access to the Services may be permanently discontinued subject to the revocation of Login Credentials.

1.3. Restrictions on Use. ADVERTISER hereby agrees that it shall not in any way, directly or inadvertently, tamper with the functionality of the Services or the content contained therein. ADVERTISER represents and warrants that it will not, and shall not authorize or encourage a third party to:

i. reverse engineer, decompile, disassemble, modify, create derivative works of, or disassemble any components of the Services, or disseminate malware;

ii. use the Services in a manner that violates any applicable government laws, rules, and regulations, third parties' proprietary rights, or any of ENGAGE's policies or in a manner that is deceptive, unethical, false, or misleading;

iii. engage in any deceptive or fraudulent activity as determined by ENGAGE in its sole discretion in connection with the use or procurement of Services, which may include, without limitation, clicks without referring URLs, extraordinary high numbers of repeat clicks, fraudulent impressions generated by any person, robot, automated program or similar device, or the use of a credit card to make a payment to Account that was not authorized by the credit card holder and gaining, or attempting to gain, unauthorized access to the Services, or access to pages of any of the Website for which you are not authorized by ENGAGE to access;

iv. transmit any material to the Website or RTB Platform that contains any viruses, Trojan horses, worms, or other computer programming routines that may damage, interfere with, intercept, copy or misappropriate any system, data or information relating to the Services;

v. engage in any marketing activities, promoting of products or services or taking any action that is illegal, obscene, misleading, discriminatory, defamatory, threatening or harassing or that causes an illegal, obscene, misleading, discriminatory, threatening or harassing result;

vi. use Account and/or Services in any manner that results, or could result, in complaints, claims, fees, fines, penalties or any other liability to ENGAGE or ADVERTISER;

vii. license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit or make available the Services, except as expressly contemplated herein; or

viii. use the Services to gain competitive intelligence or market research for the purpose of creating a product or service similar in nature or design to ENGAGE's Services.

The above prohibitions constitute a non-exhaustive list of activities any and all of which will subject the Agreement to termination and constitute a material breach by ADVERTISER that may result in legal liability to ENGAGE and any affected third parties for resulting damages.

1.4. Review of ADVERTISER Registration. ENGAGE may confirm or otherwise verify or check, the truth and accuracy of any registration information provided by ADVERTISER when creating Account. If at any time ENGAGE, in its sole judgment and discretion, determines the ADVERTISER's registration information to be misleading, inaccurate or untruthful, ENGAGE may restrict, deny or terminate ADVERTISER's Account, ADVERTISER's access and use of, and/or any benefits derived from ADVERTISER's participation in the Services. ADVERTISER further agrees to cooperate in any investigation by ENGAGE or any party acting on ENGAGE's behalf.

1.5. Account Accuracy and Usage. ENGAGE will attribute all direction received from Account as authorized by ADVERTISER. ADVERTISER is solely responsible for ensuring the accuracy of all information ADVERTISER provides to ENGAGE in accessing and performing functions of the Service.

## **2. Fulfillment of Winning Bids.**

2.1. Winning Bid. For each bid request for which ADVERTISER submits the highest bid ("Winning Bid") and thus wins the Inventory, ADVERTISER will be the winning bidder ("Winning Bidder"). The Winning Bid is the price at which the impression is sold to ADVERTISER. Once the Winning Bid has been determined Inventory is deemed to have been purchased by ADVERTISER. Absent written agreement to the contrary, ENGAGE makes no guarantees as to the pricing of any Inventory. ENGAGE or ENGAGE's publishers may impose pricing floors or other limits on Inventory pricing.

2.2. Payment of Winning Bid Price. Unless alternative payment terms are agreed to in writing, payment in the amount of Winning Bid shall be deducted from amounts funded to ADVERTISER's Account as defined in Section 3.1. ADVERTISER may from time to time be permitted to establish credit with ENGAGE, subject exclusively to approval by ENGAGE and conditioned on the fixed requirements set forth in the applicable IO.

2.3. Delivery of Ad Content. For each Winning Bid for which ADVERTISER is the Winning Bidder, ENGAGE will cause ADVERTISER's Ad Content to be delivered subject to the terms and conditions herein. ENGAGE reserves the right to reject or refuse to run any Ad Content at any time if it determines that such Ad Content does not comply with ENGAGE's Ad Quality Standards, as defined below, publisher requirements, or would otherwise be inappropriate or damaging to its publishers.

2.4. Reporting. ENGAGE will track the number of impressions, inquiries, conversions, clicks, offers, installations, or other actions taken by third parties in connection with Ad Content, and all payment will be based on such measurements, which shall be final.

## **3. Billing and Payment.**

3.1. Account Funding. Unless otherwise agreed to and documented in an IO executed by the Parties, ADVERTISER will be required to fund Account prior to being permitted access to Services to purchase Inventory. Amount funded to

Account must be verified by ENGAGE prior to ADVERTISER gaining access to Services. Account may be funded by credit card, check or wire transfer. Payment must be made in U.S. Dollars. A minimum payment of \$500 is required each time Account is funded. ADVERTISER is responsible for confirming the accuracy of all information provided for each payment. You will not be permitted to bid on and purchase Inventory, until after the funding payment has been verified and the funded amount has been credited to your account. All amounts funded to ADVERTISER's Account which are not credited against the ADVERTISER's Account after six (6) months of receipt by the COMPANY shall be forfeited by the ADVERTISER and become the property of the COMPANY. Amounts will not be refunded to Advertiser once forfeited.

3.2. Replenishing Account. Once the entire balance of ADVERTISER's Account has been depleted, ADVERTISER will be required to re-fund Account prior to accessing Services to purchase any additionally Inventory. Ability to purchase Inventory, in such case, will once again be restricted until the payment has been verified and posted to Account. If Account balance is less than that required for the Inventory ADVERTISER seeks to purchase, the contemplated transaction may not be completed. If the transaction is not completed, ENGAGE will not be liable to you or to any third party, for any loss suffered as a result of such incomplete transaction. ADVERTISER acknowledges that ENGAGE reserves the right to accept the second highest bid in the event that ADVERTISER does not have sufficient funds in Account to satisfy the purchase of Inventory.

3.3. Payments by Credit Card. ADVERTISER agrees not to, directly or indirectly, cause or permit amounts funded to ADVERTISER's Account to be charged-back by the credit card company through which the Account was funded.

3.4. Modifications to Funding Requirements. ENGAGE reserves the right, in its sole discretion, to change the limits or impose new restrictions on the amount that ADVERTISER is permitted to deposit, or is required to maintain in Account.

3.5. Taxes and Expenses. ADVERTISER will be responsible for all sales taxes, use taxes, value added taxes, withholding taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based solely upon ENGAGE's income.

#### **4. Ad Quality Standards.**

4.1. Submission Requirements. ADVERTISER is responsible for ensuring that all Ad Content submitted for delivery by ENGAGE are in compliance with the following guidelines, collectively the "Ad Quality Standards":

i. ADVERTISER shall not provide Ad Content or other creative that contains, or links to, any Prohibited Content. "Prohibited Content" shall mean:

- a. content that is pornographic, obscene, indecent in nature, has libelous and defamatory material, or in ENGAGE's sole and reasonable discretion, might be deemed harmful to ENGAGE's business reputation or the business reputation of ENGAGE's publishers;
- b. content that promotes the excessive use of alcohol, tobacco, or illegal substances, violence, profanity, expletives, or inappropriate language;
- c. content that offers or disseminates fraudulent goods, services, schemes, or promotions, including any make-money-fast or pyramid schemes;
- d. content that promotes illegal activity such as copyright infringement (including all file hosting sites), racism, hate, mail fraud, spam, pyramid schemes, or other advice not permitted under applicable law;
- e. content that violates any intellectual property right or other proprietary or privacy right of any third party.

ii. Publisher's technical specifications found on publisher website and/or according to purchased Inventory requirements. ADVERTISER is charged with knowledge of ENGAGE and publisher requirements, which have been provided or made available to ADVERTISER, in connection with the delivery of Ads and ensuring ongoing compliance with policies. ADVERTISER must ensure that all Ad Content complies with the applicable publisher's rules regarding the type of advertising that may be shown on their website. If you are uncertain as to whether your Ad Content meets the publisher's guidelines, ADVERTISER should contact an ENGAGE representative in order to avoid interruptions, penalties or Account suspension or closure.

4.2. Initial Review of Ads. In order to protect the integrity of the publisher's website, Ad Content must first be approved by ENGAGE before Ad Content will be displayed. To increase the likelihood that your Ad Content will be approved, you should ensure that the Ad Content i) fits within the size parameters specified, and ii) complies with all of the applicable submission requirements.

4.3. Periodic Review of Ad Content. ENGAGE may periodically review Ad Content to ensure on-going compliance with submission requirements. ENGAGE reserves the right to remove any Ad Content it feels are non-compliant with such submission requirements or that, in ENGAGE's opinion, damage the integrity of the Services. In addition to removing an Ad, ENGAGE may also suspend and/or terminate ADVERTISER's Account and/or any Ad Content that have been uploaded to the Services. ENGAGE's right to review Ad Content shall in no way obligate ENGAGE to review Ad Content submitted to, or through, the Services and will not be liable to ADVERTISER or to any third party for failure to do so.

## 5. User Content

5.1. User Content. ADVERTISER is solely responsible for all information, content and Ads (collectively "User Content") uploaded to or through, or that are served using, the Services. ADVERTISER must ensure the quality, accuracy, legality and appropriateness of all User Content. ENGAGE will not be liable for any loss or damages incurred by ADVERTISER or third parties occurring as a result of ADVERTISER's User Content.

5.2. License. ADVERTISER warrants that through posting to, or storing of, User Content on the Website or RTB Platform that ADVERTISER owns or has license to use all User Content. ADVERTISER further agrees that by posting or distributing User Content through the Services ADVERTISER:

i. Grants to ENGAGE, and its affiliates and suppliers, a non-exclusive, royalty-free, transferable right to use, display, perform, reproduce, distribute, publish, modify, adapt, translate, and create derivative works from, such User Content, solely in the manner and for the purposes for which the Services are used; and

ii. Represents to ENGAGE that ADVERTISER has the lawful right to post and distribute User Content to or through the Services and, in doing so, ADVERTISER is not violating the terms of this Agreement, the terms of any other agreement, or the rights of any person or entity.

5.3. Maintaining User Content. ADVERTISER is solely responsible for maintaining all User Content that ADVERTISER uploads to, or accesses via, the Website or RTB Platform. ENGAGE does not guarantee or warrant that any User Content uploaded to, or accessed through, the Service will not be subject to inadvertent damage, corruption or loss.

## 6. Ownership.

6.1. Ownership. No licenses to any intellectual property rights of ENGAGE are granted or shall be implied hereunder except to the extent necessary for the fulfillment of the purposes of this Agreement set forth herein. ADVERTISER acknowledges that ENGAGE owns all right, title and interest in and to, and all intellectual property rights embodied in, the Website and RTB Platform, materials and other ENGAGE proprietary information and technology used by ENGAGE and its affiliates, including future developments and enhancements, made available to ADVERTISER, in connection with the Services, including without limitation, any and all improvements, updates and modifications thereto, and Login Credentials. Any feedback, comments, or suggestions you provide regarding the Services are entirely voluntary, and ENGAGE will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such feedback, comments or suggestions as it sees fit, entirely without obligation or restriction of any kind, on account of intellectual property rights or otherwise.

6.2. Updates to Services. ADVERTISER acknowledges and agrees that ENGAGE reserves the right, in its sole discretion and without incurring any liability to ADVERTISER, to change, update or modify the Services at any time, and from time to time, without first providing notice to ADVERTISER. ADVERTISER shall not have approval rights over these updates ENGAGE shall keep ADVERTISER reasonably apprised of these updates and shall act in good faith to maintain ADVERTISER's access to the Services should a change, update or modification interfere with that access.

6.3. Right to Suspend. ENGAGE may, in its sole discretion, with or without notice, suspend, change or impose limits on the operation of ADVERTISER's use of the Services, or any portion thereof, either temporarily or permanently, without any liability of ENGAGE to ADVERTISER or third parties.

## 7. Termination.

7.1. Term and Termination of Agreement. This Agreement shall commence upon the creation of ADVERTISER Account and continue until terminated by either Party under the following conditions: i) Fifteen (15) days after the other Party's receipt of notice that such receiving party is in material breach of the Agreement, unless such receiving party cures the breach within the fifteen (15) day period or the non-breaching party withdraws its notice of termination; ii) for convenience, upon thirty (30) days written notice; or (iii) Immediately upon notice by a party if the other party (a) is adjudged insolvent or bankrupt, (b) institutes or has instituted against it any proceeding seeking relief, reorganization or arrangement under any laws relating to insolvency (and, in the case of any such proceeding instituted against it, the proceeding is not dismissed within sixty (60) days after filing), (c) makes any assignment for the benefit of creditors, (d) appoints a receiver, liquidator or trustee of any of its property or assets, or (e) liquidates, dissolves or winds up its business.

7.2. Termination by ENGAGE. In addition to the foregoing, and notwithstanding anything to the contrary herein, ENGAGE may, in its sole discretion, delete or deny as to ADVERTISER any Account, for any reason including, but not limited to violation of the terms and conditions set forth in this Agreement.

7.3. Closing Account. Upon termination of ADVERTISER Account for any reason, ADVERTISER shall be entitled to a refund of the full unused balance remaining in ADVERTISER's Account, less amounts payable to ENGAGE, which shall include those amounts due to satisfy the \$500 minimum spend requirement. Refund shall be paid within fourteen (14) days of receiving written instructions (email acceptable) from ADVERTISER requesting refund. ADVERTISER is responsible for providing ENGAGE with adequate refunding information in a timely manner. ENGAGE is not obligated to give notice to ADVERTISER of any balance remaining in Account after termination of Account. In the event ADVERTISER fails to give written instruction to ENGAGE requesting refund of remaining balance within six (6) months of Account termination, ADVERTISER will be considered to have waived the right to reimbursement of remaining amounts and funded amounts shall be considered forfeited.

## 8. Warranties and Representations

8.1. Each party represents and warrants that: (i) it has all necessary rights and authority to enter into and to perform its obligations hereunder, and that its signatory is fully authorized to agree to these terms; (ii) it will conduct its business and fulfill its obligations hereunder in compliance with its published privacy and other policies and with all applicable laws, rules and regulations.

8.2 Additional ADVERTISER Warranties. ADVERTISER further represents and warrants that it will not directly or indirectly deliver any Malware, viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts or agents into the RTB Platform (or onto any Ad Inventory made available through the RTB Platform). For purposes of this Agreement malicious agents or Malware, expressly includes, but is not limited to the following: (i) a redirect, which will check settings, redirect based on what software user doesn't have installed, and present a misleading download/update, (ii) a plugin extension, which asks user to download or update in a misleading fashion where the brands or software advertised and delivered do not match, (iii) an auto-download, which is any ad that begins to download software on a user computer without an opt-in, regardless of creative attribute, or (iv) a fake app creative, or any creative where the landing page does not match the messaging or brand in the creative.

8.3. Disclaimer of Warranties. ENGAGE MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND REGARDING THE SERVICES, AND EXCEPT AS EXPLICITLY PROVIDED HEREIN, ENGAGE HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNINTERRUPTED OR ERROR FREE OPERATION, QUALITY, ACCESSIBILITY, NON-INFRINGEMENT OR THOSE ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE. SERVICES ARE PROVIDED TO ADVERTISER ON AN "AS IS" AND "AS AVAILABLE" BASIS. ADVERTISER UNDERSTANDS AND AGREES THAT THE WEBSITE AND RTB PLATFORM MAY BE INACCESSIBLE, UNAVAILABLE OR INOPERABLE FOR ANY REASON FROM TIME TO TIME. FOR GREATER CERTAINTY, ENGAGE DOES NOT REPRESENT OR WARRANT THAT THE WEBSITE AND RTB PLATFORM WILL OPERATE SECURELY, ERROR-FREE OR WITHOUT INTERRUPTION.

WITHOUT LIMITING THE FOREGOING, ENGAGE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO ANY THIRD PARTY PRODUCT, SERVICE OR COMPONENT PROVIDED THROUGH OR AS PART OF THE SERVICES. THERE ARE NO INTENDED THIRD PARTY BENEFICIARIES OF ENGAGE'S DUTIES OR OBLIGATIONS UNDER THE AGREEMENT, AND NO THIRD PARTY SHALL BE PERMITTED TO ASSERT ANY CLAIM AGAINST ENGAGE RELATING TO THE AGREEMENT AS AN INTENDED THIRD PARTY BENEFICIARY.

**9. Limited Liability.** EXCEPT WITH RESPECT TO LIABILITIES ARISING OUT OF EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREIN, NEITHER PARTY IS LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST BUSINESS, REVENUE, OR ANTICIPATED PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT WITH RESPECT TO LIABILITIES ARISING OUT OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS OR ADVERTISER'S INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL EITHER PARTY'S LIABILITY AND DAMAGES UNDER THIS AGREEMENT EXCEED THE SUM OF THE TOTAL AMOUNTS PAID OR PAYABLE TO ENGAGE UNDER THIS AGREEMENT DURING THE 6 MONTHS IMMEDIATELY PRECEDING THE DATE THE CLAIM FIRST AROSE. THE PARTIES AGREE THAT THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THE FOREGOING LIMIT.

**10. Indemnification.** ADVERTISER shall indemnify, defend and hold harmless ENGAGE and its directors, officers, employees and agents and its and their respective successors, heirs and assigns ("ENGAGE Parties") against any liability, costs, damage, loss or expense, including reasonable attorneys' fees and costs incurred by the ENGAGE Parties in connection with any third party claim arising out of or relating to (a) a breach of any ADVERTISER representation or warranty under this Agreement; (b) ADVERTISER's use of the Services in violation of this Agreement; and (c) any allegation that Ads or other material provided by ADVERTISER violates any applicable law or infringes any third party right, including but not limited to intellectual property rights.

ENGAGE will: (a) promptly notify ADVERTISER in writing of the claim, with the understanding that any failure to provide this notice promptly only relieves ADVERTISER of its indemnification responsibility to the extent its defense is materially prejudiced by the delay; (b) grant ADVERTISER sole control of the defense and/or settlement of the claim (provided that ADVERTISER will not enter into any settlement of a Claim that: (i) imposes a monetary obligation on ENGAGE that is not covered by the indemnification, (ii) imposes a material, non-monetary obligation on ENGAGE, (iii) does not include an unconditional release of ENGAGE, or (iv) admits liability on the part of ENGAGE without ENGAGE's prior written consent, which will not be unreasonably withheld or delayed); and (c) provide ADVERTISER, at ADVERTISER's expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim, but in a manner consistent with ENGAGE's confidentiality obligations and preservation of attorney/client and work product privileges. ENGAGE shall have the option, at its expense, to participate in the defense or settlement of the Claim with counsel of its own choosing.

## **11. Confidentiality.**

11.1. In the course of our dealings under this Agreement, the Parties may exchange "Confidential Information," defined as any trade secrets, or non-public or proprietary information or materials, including but not limited to financial status, sales and business plans and strategies, patent applications, or other intellectual property provided by the disclosing party ("Discloser"), that is designated in writing as confidential, or that ought to be considered confidential by the receiving party ("Recipient") based on the nature of the information or materials and the circumstances of disclosure. For three (3) years from the date of disclosure of the relevant Confidential Information: (a) the Recipient will not use the Discloser's Confidential information other than in furtherance of the business relationship in accordance with these terms; and (b) the Recipient will not disclose the Discloser's Confidential Information except to the Recipient's employees, contractors, directors, shareholders and legal and financial advisers who have a reasonable "need to know" and are bound by reasonable confidentiality obligations comparable to those herein; provided, however, that Recipient's confidentiality obligations regarding trade secrets shall be perpetual. The Recipient will take the same precautions to safeguard the Discloser's Confidential Information as for its own Confidential Information, but not less than reasonable measures. Each party retains exclusive ownership of its own Confidential Information.

11.2. The confidentiality restrictions of this Section 11 shall not apply to information that: (i) was independently developed without any use of the Confidential Information of the Discloser as established by written evidence; (ii) was in the public domain at the time it was disclosed or enters the public domain through no act or omission of the Recipient; (iii) was rightfully known to the Recipient, without restrictions on disclosure, prior to the time of disclosure; or (iv) is disclosed pursuant to applicable law or the order or requirement of a court, administrative agency or other governmental body (provided Recipient uses reasonable diligence to limit disclosure, and to obtain confidential treatment for the relevant Confidential Information or an appropriate protective order, and has provided Discloser reasonable notice to enable Discloser to participate in the legal proceedings).

## **12. Data**

12.1. "Service Data" refers to any data that either party collects during delivery of Ads or performance of its obligations under this Agreement, including end user device information, end user's session-based browsing behavior, number of impressions, http header information, and any other data that ADVERTISER elects to provide to ENGAGE. In connection with the operation of the Services, ENGAGE may collect and receive Service Data. ADVERTISER agrees that ENGAGE may, so long as

such use and storage is in compliance with all applicable laws, rules, and regulations: (a) use such information (i) to provide the Services to ADVERTISER and its advertisers, (ii) for ENGAGE's internal purposes, and (iii) to improve any products or services provided by ENGAGE; (b) disclose such information as may be required by law or legal process; and (c) use and disclose such information when it is aggregated, such that it does not specifically identify the ADVERTISER or end user; and as necessary for ENGAGE to fulfill its obligations to the applicable publisher where the Ads were displayed.

12.2. ADVERTISER and its advertisers may use Service Data solely to bid on ad inventory made available via the Services, and deliver the applicable Ad Content, provided that (a) such use is in compliance with all applicable privacy policies, laws, rules, regulations and industry self-regulatory regimes relating to the collection, use and disclosure of Service Data (including but not limited to applicable restrictions on retargeting, merging with other data, and use of personally identifiable information or sensitive data); (b) it and its advertisers provide any notices and options, and obtain any consents, waivers or authorizations from end users that may be required in connection therewith, and (c) it and its advertisers do not use any Service Data to (i) segment end users, retarget Ads, or create or supplement profiles that relate to any individual end user, (ii) subsequently purchase that audience using Services or any other service; (iii) combine, correlate or merge Service Data with any personally-identifiable information or links to personally-identifiable information.

### 13. Miscellaneous

13.1. Force Majeure. Neither Party shall be liable for, or considered in breach of or default under this Agreement on account of, any delay or failure to perform as required (except with respect to payment obligations) as a result of any causes or conditions which are beyond such Party's reasonable control and which such Party is unable to overcome by the exercise of reasonable diligence; provided that the non-performing Party gives reasonably prompt notice under the circumstances of such condition(s) to the other Party.

13.2. Dispute Resolution. This Agreement shall be governed by the laws of the State of California without respect to choice of law rules. The Parties hereby consent to exclusive jurisdiction and venue in the state and federal courts in Los Angeles County, California for such purpose, waive the personal service of any process upon them and agree that service may be effected by overnight mail (using a commercially recognized service) or by U.S. mail, to Engage at the address provided under Notice and to the ADVERTISER at the address provided in the most recent IO. Any claim under this Agreement must be filed within one (1) year of the time such claim arose, regardless of any law to the contrary, otherwise such claim will be forever barred.

13.3. Agreement to Arbitrate. Any controversy arising out of or pertaining to this Agreement, or its scope, interpretation, application, enforcement, or alleged breach, shall be resolved through binding arbitration administrated through Judicate West in Los Angeles, California unless otherwise agreed upon. Each side shall bear the expense of the arbitration proceeding equally unless otherwise agreed upon. The arbitration proceedings shall be governed by Judicate West Arbitration Rules of Procedure or any other rules the Parties mutually agree upon in writing. Any award of the Arbitrator(s) may be entered as a judgment in any court having jurisdiction.

13.4. Notice. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given at the time such communication is sent by registered or certified mail (return receipt requested), or recognized national overnight courier service, or delivered personally, to the following addresses:

(i) If to ENGAGE:

Attention: General Counsel, engage:BDR, Inc.  
9000 Sunset Blvd., Suite 500  
West Hollywood, CA 90069  
or by email: Legal@EngageBDR.com.

(ii) If to ADVERTISER: to the most current address or email associated with the ADVERTISER's Account.

13.5. Assignment. Neither Party may assign this Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, the assigning Party shall not be required to obtain consent for assignment or transfer made by (a) operation of law, or (b) to an entity that acquires substantially all of the Party's stock, assets or business.

13.6. Independent Contractors. Each Party is an independent contractor. Any intention to create a joint venture or partnership between the Parties is expressly disclaimed. Except as set forth herein, neither Party is authorized or empowered to obligate the other or to incur any costs on behalf of the other without the other Party's prior written consent. It is further agreed that the ADVERTISER has no authority to create or assume in ENGAGE's name or on its

behalf any obligation, express or implied, or to act or purport to act as its agent or representative for any purpose whatsoever and the ADVERTISER shall not hold itself out as having any such authority.

13.7. Entire Agreement, Modification. This Agreement and exhibits, addenda or terms and conditions incorporated by reference herein constitutes a valid and binding agreement between the Parties, and has been duly executed by an authorized representative of each Party. This Agreement and any exhibits, addenda or terms and conditions incorporated by reference herein are intended to be the Parties' complete, integrated expression of the terms of their agreement and any prior agreements or understandings with respect to such subject matters are superseded hereby and fully merged herein, and may only be modified in writing by authorized representatives of the Parties.

13.8. Survival & Severability. Any obligations which expressly or by their nature are to continue after termination, cancellation, or expiration of this Agreement shall survive and remain in effect after such happening. Each Party acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all the risks (both known and unknown) associated with the transactions contemplated hereunder. Further, all provisions are inserted conditionally on their being valid in law. In the event that any provision of this Agreement conflicts with the law under which the Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties to the Agreement, (i) such provision will be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and (ii) the remaining terms, provisions, covenants, and restrictions of the Agreement will remain in full force and effect.

13.9. Remedies, Waiver. Except as otherwise specified, the rights and remedies granted to a Party under this Agreement are cumulative and in addition to, not in lieu of, any other rights and remedies which the Party may possess at law or in equity. Failure of either Party to require strict performance by the other Party of any provision shall not affect the first Party's right to require strict performance thereafter. In any action that arises under or relates to this Agreement, the losing Party will pay the prevailing Party's reasonable attorney's fees and costs. Waiver by either Party of a breach of any provision shall not waive either the provision itself or any subsequent breach.

13.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. For purposes hereof, a scanned or facsimile copy of this Agreement shall be deemed to be an original.