OUTBRAIN DSP (formally Zemanta) SUPPLY SIDE PLATFORM AGREEMENT

1. SSP's Services.

1.1 <u>SSP's Services</u>. SSP will provide the following services to Outbrain DSP (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 DSP 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 DSP.

1.2 <u>License Grant</u>. Subject to the terms of this Agreement, SSP hereby grants Outbrain DSP a non-exclusive, non-transferable right to access and use the Services. Outbrain DSP 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 dissemble 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 <u>SSP's Ownership</u>. SSP retains all right, title and interest in and to the Services and Exchange, including all intellectual property rights thereto.

1.4 <u>Acceptance</u>. 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 DSP, Outbrain DSP will review, test (including in respect of functionality, performance and usability) and either approve or reject the Exchange. Outbrain DSP will provide all 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 DSP. In the event that the Exchange does not meet Outbrain DSP'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 DSP'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 DSP's clients' advertising materials, except for the right to display the Outbrain DSP'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 <u>Payment Terms</u>. Outbrain DSP 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 to SSP's measurements. The payable event is a successfully sent win notice that communicates the exact cost incurred by a specific bid that Outbrain DSP has submitted and won. Outbrain DSP will pay SSP within sixty (60) 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. If the parties are unable to resolve the dispute within thirty (30) days from the date of notification of the dispute, then Outbrain DSP and SSP agree to submit the dispute to binding arbitration with a single arbitrator and each party shall bear their own attorneys' fees but share the cost of the arbitrator.

3.2 <u>Payment Liability</u>. Unless otherwise set forth elsewhere, SSP agrees to hold Outbrain DSP liable for payments solely to the extent proceeds have cleared from client to Outbrain DSP for Fees incurred by bidding. For sums not cleared to Outbrain DSP, SSP agrees to hold client solely liable. Outbrain DSP agrees to make every reasonable effort to collect and clear payment from client(s) on a timely basis. Outbrain DSP's credit is established on a client-by-client basis. Upon request, Outbrain DSP will make available to SSP written confirmation of the relationship between Outbrain DSP and client. This confirmation should include, for example, client's acknowledgement that Outbrain DSP is its agent and is authorized to act on its behalf in connection with the specific Work Order and these Terms. In addition, upon the request of SSP, Outbrain DSP will confirm whether client has paid to Outbrain DSP in advance funds sufficient to make payments pursuant to the Work Order. If Outbrain DSP's or client's credit is or becomes impaired, SSP may require

payment in advance.

3.3 <u>Taxes</u>. 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 DSP 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 DSP to SSP under the terms of this Agreement.

3.4 <u>Fraudulent Activity</u>. 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 DSP suspects Fraudulent Activity, then Outbrain DSP shall notify SSP via email that it suspects Fraudulent Activity and Outbrain DSP, in its sole discretion, may withhold payment to SSP. Outbrain DSP and SSP agree to work in good faith to resolve any dispute regarding Fraudulent Activity. If the parties are unable to resolve the dispute within thirty (30) days from the date of notification of the dispute, then Outbrain DSP and SSP agree to submit the dispute to binding arbitration with a single arbitrator and each party shall bear their own attorneys' fees but share the cost of the arbitrator.

3.5 <u>Prohibited Placements</u>. SSP shall not place and will not allow to place ads from Outbrain DSP in any context that would not conform to Federal Trade Commission industry guidelines for native advertising. SSP shall not place ads and it will not allow to place ads from Outbrain DSP by injecting them into third party web pages or apps through browser extensions, injection proxies or other similar mechanisms.

4. Term/Termination.

4.1 <u>Term</u>. The term of this Agreement shall begin on the Effective Date and continue in full force & effect unless terminated earlier as provided hereunder or as otherwise specified on an order form.

4.2 <u>Termination</u>. Either party may terminate this Agreement for convenience at any time by providing thirty (30) calendar days' prior written notice. In addition, 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 cures such breach within thirty (30) days of such notice.

4.3 <u>Effect of Termination</u>. Upon termination of this Agreement, Outbrain DSP'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 DSP shall pay SSP any fees owed to SSP within sixty (60) days from the date of termination. Sections 1-3, 4.3 and 6-9 and 11 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 Each party shall comply at all times with Data Protection Laws. Outbrain DSP and SSP will each own the interaction data that it collects from the Services and the Exchange. SSP may not use or disclose any of the interaction data gathered by or on behalf of Outbrain DSP except that SSP shall have the right to use the Outbrain DSP Data for the sole purpose of providing the Services.

5.2 SSP and Outbrain DSP 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. The parties are independent controllers and businesses in respect of user data processed by either party and each party remains individually responsible for compliance with relevant Data Protection Laws. SSP warrants that, to the extent end user consent is received using the IAB methodology (and/or any other industry standard), it shall pass Outbrain DSP a clear consent or no consent signal (i.e. the SSP must not send Outbrain DSP a null or invalid signal). If an end user has opted out of behavioural advertising via the SSP, the SSP must not pass Outbrain DSP such end user's advertiser ID or other identifying mechanism.

5.3 The provisions of the [Outbrain DSP SSP Data Sharing Agreement](#) 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 into 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. It shall comply with all Applicable Laws. "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. Any Applicable Laws related to the privacy of personal data are referred to as "Data Protection Laws".

6.1.5. The inventory (i) does not violate any Applicable Laws, rules and regulations and will not contain any material which may be harmful, abusive, obscene, threatening or defamatory; (ii) SSP cannot and will not attempt to provide inventory that is targeted to children under the age of sixteen (16);

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

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

6.2 No party to this Agreement has made any representations or warranties to the other except as expressly set forth in this Agreement.

7. SSP's Warranty Disclaimer. SSP DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET Outbrain DSP'S REQUIREMENTS. THE SERVICE IS PROVIDED "AS IS".

8. Limitation of Liability. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS OR CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS OR PROFITS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND A PARTY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, 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.

9. Indemnification.

9.1 SSP hereby agrees to defend, indemnify and hold harmless Outbrain DSP, 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 any third party claims, actions, suits or proceedings relating to or arising out of: (i) any breach (or, as to defense 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 DSP'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.

9.2 Outbrain DSP hereby agrees to defend, indemnify and hold harmless SSP and its 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 any third party claims, actions, suits or proceedings relating to or arising out of Outbrain DSP's gross negligence, willful misconduct or fraudulent actions.

9.3 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 defense and all negotiations relative to the settlement of any such claim, provided that it diligently undertakes such defense 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.

10. **Maintenance and Upgrades**.

10.1 Updates, Upgrades. SSP shall provide Outbrain DSP, without any further charge to Outbrain DSP, 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.

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

11. **General Provisions**.

11.1 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 DSP technology (software and hardware products), marketing or promotion materials related to Outbrain DSP's technology, products or services or customers or suppliers of Outbrain DSP 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.

11.2 Notices. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by United States registered or certified mail, or internationally-recognized courier service such as Federal Express, duly addressed to the parties as set forth on the Order Form. Delivery of any notice shall be deemed made on the date of its actual delivery if personally delivered, and on the date indicated in the return receipt or courier's records as the date of its delivery or first attempt at delivery if sent by mail or courier. Any party may change its address or telecopy number for notice purposes by giving notice to the other party.

11.3 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.

11.4 No Partnership. This Agreement shall not be construed as creating a partnership or joint venture between Outbrain DSP 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.

11.5 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.

11.6 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; <u>provided</u>, <u>however</u>, the foregoing prohibition shall not apply to any sale of all or substantially all of one party's assets or any merger or reorganization to which consent of the other Party is not required.

11.7 <u>Counterparts</u>. 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.

11.8 <u>Governing Law and Jurisdiction</u>. This Agreement will be governed by and construed under applicable federal law and the laws of the State of New York, excluding any conflict of law provisions. Outbrain DSP and SSP irrevocably consent to the exclusive jurisdiction of any New York state or federal court sitting in the Southern District of New York, over any suit, action or proceeding arising out of or relating to this Agreement.

11.9 <u>Binding Effect</u>. This Agreement shall be binding upon and inure to the benefit of Outbrain DSP and SSP and their permitted successors and assigns.

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

11.11 <u>Entire Agreement; Amendments</u>. 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-in-interest and indicates that it is an amendment of this Agreement