

## OUTGAGE TERMS OF SERVICE

These terms of service (alongside their exhibits, the “**Agreement**”) serve as an agreement between Outgage Inc. (the “**Company**”) and you (the “**User**”), and govern your use of the Company’s applicable Services. By clicking that you accept these terms, or using the Services, or accepting the terms of this Agreement by executing an Order which references this Agreement, you agree to be bound by this Agreement. In case you are entering into this Agreement on behalf of another legal entity, such other legal entity shall be considered the User, and you represent that you have the power and authority to execute this agreement for such entity. This agreement is applicable whether services are accessed through the Company’s websites (www.outgage.co, as well as any other website operated by the Company), through the Company’s mobile application, or otherwise, and is effective once the User executes an Order with the Company, clicks “accept” or begins using the Services, the earlier (the “**Effective Date**”).

### 1. General

1.1. The Company’s “**Services**” include (A) the license (on a subscription basis) to use and access the platform offered by the Company (the “**Platform**”) which allows the User, amongst others (i) to order, and customize gifts and gift packaging (“**Gifts**”) to be provided to Users’ own customers, partners, employees and other stakeholders, and which may have interactive features such as QR codes or URLs attached or appended to the Gifts by the Company, (ii) to create one or more web landing pages on Company web domains which may interact with such Gifts (a “**Landing Page**”), and (iii) to track information related to the Gift recipients’ use and engagement with such Gifts, to review and extract related statistics and reports, and other related features with respect to the use of such Gifts and the Landing Pages; (B) coordination and assistance with the Supply and Delivery services of Gifts provided by third parties; and (C) provision of certain related Professional Services (as define below), all as shall be further specified herein. Certain portions of the Services (or certain types, features, scopes or capabilities of such Services) may not be available for offer in certain regions or by certain Users, as shall be determined by the Company.

1.2. Receipt of certain Services (as determined by the Company in its sole discretion), shall be subject to acceptance by User of a written order form issued by the Company for such Services (an “**Order**”). Subject to the conditions of this Agreement and any applicable Order, the User shall be entitled to use the Services it chooses, in the manner it chooses.

### 2. License to the Platform

2.1. Subject to the terms of this Agreement and any applicable Order executed between the parties, the Company shall grant to User, solely for its internal business operations and end-use (as applicable), a limited, non-exclusive, non-transferable, non-sublicensable, revocable right during the applicable Subscription Period (as defined below) alone to access and use the Platform (or the portions/features thereof) as specified in the Order, or as otherwise made available to User by the Company. Use of the Platform shall be further subject to any use parameters or restrictions specified in the Order.

2.2. The term for any license to the Platform provided under an Order shall commence on the date specified in the applicable Order, continue for the ‘subscription period’ specified therein, and thereafter, shall automatically extend and renew for additional periods, each at the same length of the ‘subscription period’ specified in the Order (each, a “**Renewal Period**”, and alongside the initial ‘subscription period’ specified in the Order, the “**Subscription Period**”). The Subscription Period shall not be renewed for the next Renewal Period only if User or Company notify the other in writing by no later than 30 days prior to the end of the then current period of the Subscription Period of their wish not to extend the Subscription Period for the next Renewal Period (a “**Non-Renewal Notice**”). To the extent Company notifies User of an increase in or addition of fees for the next Renewal Period no later than 45 days prior to the end of the then current period of the Subscription Period, such increase shall be deemed accepted by User to the extent a notice of non-renewal is not provided by

it by the last date for its provision. The Subscription Period may also be earlier terminated in accordance with Section 18 of this Agreement.

2.3 Where an Order for a subscription to the Platform does not specify a Subscription Period, or where Company has otherwise provided a User access to the Platform absent execution of an Order, the Subscription Period shall be as specified by the Company in writing, provided that in such cases the Company may earlier terminate the Subscription Period at any time by providing written notice of termination with immediate effect.

### **3. Professional Services**

3.1. Subject to the terms of this Agreement and an applicable Order to be executed between the parties, Company shall provide certain professional services related to its offering (as shall be specified in the Order), which may include services such as customization, creative or design or branding services for the Gifts, assistance and support with use of the Platform, or assistance with design or customization capabilities outside those made available to Users on the Platform (collectively “**Professional Services**”). Any Professional Services or other resources (such as credits for use of Platform functionality, hour banks for future utilization of Professional Services and the like) provided for in an Order alongside a subscription to the Platform shall be available for consumption during the applicable Subscription Period guaranteed under such Order at the time of the execution of such Order alone, and thereafter shall expire (without any further obligation from the Company in case they were not consumed).

3.2. The Company undertakes and warrants that the Professional Services will be performed in a workmanlike and professional manner, by persons adequately skilled and qualified to perform such services. All Professional Services will be rendered at times, frequencies and scope reasonably coordinated between the parties. It is clarified that all the timeframes for completion of any deliverables of Professional Services provided by Company are estimates and subject amongst others to Users’ compliance with any User obligations hereunder in a prompt manner.

3.3. In connection with the Professional Services, User is responsible to: (a) cooperate with the Company, allocate adequate personnel to meet with the Company, and provide the Company input and feedback (inclusive, without limitation, of answers to any questionnaire’s or style guides provided by the Company with respect to the Gifts), all as reasonably requested or required by the Company in order to provide the Professional Services; and (b) make available any User Content requested by User to be utilized in the Professional Services in a timely manner, and on any media/form and in any amount reasonably requested by Company in order to provide the Professional Services.

### **4. Gift Supply and Delivery**

4.1. Subject to the terms of this Agreement and an applicable Order to be executed between the parties, the Company shall (i) engage with third-party suppliers and manufacturers for the supply and manufacture of Gifts (“**Supply**” and “**Suppliers**”, respectively; to be clear, the term ‘Supply’ does not include the provision of Professional Services, and the term ‘Suppliers’ does not include any personnel utilized by Company to provide ‘Professional Services’) as well as third-party deliverers, fulfillers, carriers, shippers and transporters for the delivery, fulfillment, shipping and transportation of Gifts to User or its Gift recipients (“**Delivery**” and “**Deliverers**”, respectively), in both cases for User’s benefit, (ii) manage the interactions required with such Suppliers and Deliverers, and (iii) assist User with the coordination of the Supply and Delivery. Where User requests to organize Supply or Delivery or be involved with Suppliers or Deliverers directly, Company shall not provide such Services.

4.2. The exact identity of the Suppliers and Deliverers utilized is dependent, amongst others, on the Gifts chosen by User, and User’s elections related to Supply and Delivery. Company’s engagement for the benefit of a User with Suppliers and Deliverers as aforementioned shall be for the type (and quantity) of Gifts and type of Delivery services coordinated between the Company and such User, and subject to any standard service terms of such or Supplier or Deliverer.

4.3 While the Company makes no warranties in connection with the Supply or the Delivery of Gifts, if requested by User, the Company shall reasonably act to pass on the benefit of any warranties (if any) which it has actually received from Suppliers and Deliverers for a warranty failure on their part with respect to the Supply and Delivery performed in connection with Services provided to such User.

4.4. User shall use all Gifts in compliance with their applicable instructions or manuals of Suppliers, if any.

## **5. Registration**

5.1. User acknowledges that use of the Services requires registration and a creation of an account for such User (an “**Account**”). The registration process may require of User to provide information regarding (but not limited to) User’s full name, User’s e-mail address, User’s phone number and/or other information.

5.2. Each Account cannot be shared or used by more than one User, provided that the Account may be accessed by up to the number of natural persons within the organization of a User (each an “**Authorized User**”) as specified in the Order, or (in the absence of an Order) for which the Company has provided separate login credentials (throughout the entire use period by such User, and not at any given time; and provided further that each set of login credentials is to be used by one Authorized User).

5.3. Each User is fully liable and responsible for any use or access to the Services through its Account. Each User represents and warrants that all registration information it and its Authorized Users submit is accurate and truthful, and shall update and maintain the accuracy of such information throughout the Term.

## **6. Charges and Payment**

6.1. User agrees to pay all fees set forth in an Order. Except as specifically set forth in this Agreement, all payment obligations are non-cancelable and all payments made are non-refundable. Unless otherwise specified in an Order, all fees and other amounts are payable in U.S Dollars and exclude any applicable taxes. Accordingly, User shall pay any taxes and charges which apply by law to the User (if any), including sales, usage, excise and value added taxes (if applicable). Nothing in this Agreement requires either Party to pay income taxes or similar charges of the other Party. If applicable law requires User to withhold any amount from its payments, User shall advise Company in advance and in writing and will only withhold amounts after it has provided Company adequate opportunity to provide certification of exemption or reduction with respect to such withholding obligations (and User shall act in accordance with such certification). User shall provide Company with copies of documents related to User's withholding upon Company's request. Overdue payments shall be subject to a late charge of 1.5% per month.

6.2. Certain portions of the Services may be offered by the Company for free to specific Users, or generally (or, if explicitly specified in the Order, the license to the Platform may be offered on a free trial basis for the Subscription Periods specified in Section 2.2; absent advance written approval by the Company, no such free of charge offer shall be deemed to have been made). Notwithstanding anything herein to the contrary, Company shall have sole discretion to determine which types, scopes, features or capabilities of the Services are subject to payment of fees; and the Company reserves the right to make changes in such respect, and subject all or parts of the Services offered for free to payment of certain fees in the future. Any rates specified in an Order apply only to the guaranteed Subscription Period (i.e. solely for the engagement period which User is committed to without a convenience termination or non-renewal option) therein alone, and the Company does not guarantee such fees will remain for any other periods (inclusive of any renewal periods).

6.3. For avoidance of doubt, purchase of Gifts through the Services is subject to, and purchase of certain Third Party Services (as defined below) through the Services may also be subject to, payment of fees or commissions to the applicable third party providing such Third Party Services (as applicable), and any payment details provided by a User for such purpose to the Company may be

submitted to the applicable payment processor or provider of such Gifts or Third Party Services for processing of the payment.

## **7. Services Warranty**

5.1. The Company undertakes and warrants that (a) during the applicable Subscription Period, the Platform will perform materially in accordance with its applicable written documentation made publicly available by the Company, and the Company shall make commercially reasonable efforts so that aside from unavailability caused by a force majeure event or scheduled maintenance, the Platform shall be available on a continuous basis with no more than reasonable periods (in length and amount) of unavailability; and (b) that the Professional Services shall comply with the explicit warranties provided with respect thereto hereunder ((a) and (b) collectively, the “**Services Warranty**”). The Services Warranty shall apply only if the applicable Services have been utilized in accordance with this Agreement, any applicable Order, and the Company’s written documentation for the applicable Services (if any).

5.2. In the event of a non-conformance of any applicable Service to the Services Warranty, as User’s sole remedy for such non-conformance, Company shall use commercially reasonable efforts to render the non-conforming Service compliant with the Services Warranty at no additional charge to User, and in the event Company fails to do so within a reasonable time, the User shall be entitled to terminate the applicable Order subject to Section 18.3 and if the agreement is terminated, receive a pro-rated refund of the fees pre-paid by User for the corresponding unused portion of the Platform Subscription Period or other Services (as specified in Section 18.4). Notwithstanding the foregoing, the sole remedy for a breach by the Company of the Services Warranty to any User making use of Services on a free of charge basis shall be to terminate this Agreement and its use of the Services in accordance with Section 18.2 (and no payment whatsoever by the Company shall be due in such case).

## **8. User's Obligations**

Without derogating from any other obligation of the User pursuant to this Agreement, the User is responsible to: (a) enter and provide accurate details, credentials and addresses in its use of the Services (including without limitation accurate addresses of User’s Gift recipients for Delivery), and maintain all details, credentials and addresses entered or provided accurate; (b) keep all credentials and passwords for access of the User’s Account and the Services secure and confidential, and promptly report any misuse of User’s Account; (c) meet any technical requirements for use of the Platform, including without limitation, the requirements to maintain adequate operating system and network infrastructure, all as may be specified herein or in the Platform’s documentation from time to time (User acknowledges that the Platform may otherwise not be available, or may not operate properly); and (d) comply with all applicable laws in User’s use of the Services (including without limitation laws applicable to the sending of promotional or marketing messages or materials, or use by User of third party information). User shall promptly notify Company of any breach of this Agreement of which it becomes aware. In the event of a breach of any User obligation under this Agreement (including without limitation the obligation to timely pay any fees due), Company shall be entitled to suspend or refuse User’s access to the Services or any portion thereof, block User’s access to User’s Account and/or terminate the Account, and/or terminate this Agreement and any or all outstanding Orders in accordance with Section 18.

## **9. Restrictions**

Users are not permitted (and shall not assist or authorize others) to: (a) copy, reproduce, modify, create derivative works from, or download, all or any portion or deliverable of the Services; (b) decompile, reverse engineer or otherwise attempt to discover any source code from all or any part of the Platform; (c) sell, rent, license, transfer or otherwise commercially exploit or dispose of the Services (other than transfer of Gifts as contemplated hereunder, for avoidance of doubt); (d) obtain unauthorized access to the Platform or Landing Pages; (e) use the Services in order to create or disseminate any viruses, worms, trojan horses or other malicious software; (f) use or launch any data

mining or any similar data gathering and extraction tools, in connection with the Services; (g) use the Services in any manner that damages, disables, overburdens, or impairs the Services, Company's systems or servers, or the infrastructure on which the Services operate; (h) use the Services, or otherwise make available through the Services, any unlawful, harmful, threatening, defamatory, discriminatory, offensive, obscene, infringing, and/or harassing content; (i) use the Services in violation of any applicable law; and/or (k) attempt any of the foregoing.

#### **10. User Data**

10.1. User shall comply with all applicable laws, policies, and regulations relating to personal information processing of Authorized Users or recipients of Gifts provided or submitted by User (through the Services or otherwise) to the Company ("**User Data**"). User must post a privacy policy, and that privacy policy must provide notice of User's use of Company Services.

10.2. Company will process personal data of Authorized Users or recipients of Gifts, in accordance with the Data Processing Agreement which can be found here: <https://outgage.co/legal/dpa> (the "**DPA**").

10.3. User shall indemnify and hold the Company harmless for any failure by User to comply with User's own obligations with respect to User Data under the DPA.

#### **11. User Content**

11.1. To the extent User provides or makes available to Company (thorough the Platform or otherwise) any content, designs, trademarks or other materials, inclusive without limitation of any gifts provided or made available by User, whether owned by User or a third party (collectively "**User Content**") to be included on Gifts or the Landing Page (or otherwise to be processed through the Services), User represents and warrants that User has the adequate rights for the use of the User Content as contemplated hereunder (inclusive of the uses explicitly permitted by Company and its Third Party Services providers hereunder).

11.2. User shall indemnify and hold Company harmless for any failure to comply with User's obligations or any breach of User's warranties under this Section 11. While Company is not responsible to verify User's rights in any User Content, Company reserves the right to remove any User Content which it deems to be in violation with any of the terms set forth herein or applicable law, at Company's sole discretion.

11.3. User gives its consent to Company, and grants Company with a worldwide, royalty-free, and non-exclusive license to use User Content in order to provide the Services to User.

#### **12. Confidentiality**

12.1. Each party may be provided with, given access to, or exposed to, Confidential Information of the other party in connection with this Agreement. "**Confidential Information**" of a disclosing party shall mean any information and data which should reasonably be assumed to be of a proprietary or confidential nature, whether in oral, written, graphic, machine-readable form, or in any other form, including but not limited to proprietary, technical, development, marketing, sales, pricing, operating, performance, cost, and business information, supplier information, and all record bearing media containing or disclosing such information, which is disclosed or made available by the disclosing party to the receiving party pursuant to this Agreement. Without derogating from the generality of the foregoing, Confidential Information of the Company shall include all non-public details of the Services, the results of any performance tests of the Services and any output of the Services (excluding any User Data reflected in such output), and Confidential Information of the User shall include the User Data.

12.2. Notwithstanding the above, Confidential Information shall not however include any information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the receiving party's lawful possession before disclosure by disclosing

party, or (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.

12.3. Each party shall hold the other party's Confidential Information in strict confidence, shall not disclose or make such Confidential Information available to any third party other than as permitted herein or in the DPA, and shall not use such Confidential Information for any purpose other than for performing its obligations under this Agreement or as explicitly permitted herein or in the DPA. Notwithstanding the above, either party may disclose Confidential Information of the other party if compelled to do so by a court or authority of competent jurisdiction, provided it provides the other party, to the extent legally permissible, reasonable notice of such disclosure and opportunity to attain a protective order or other remedy.

12.4. Each party shall be entitled to disclose the other party's Confidential Information only to its officers, directors, employees and consultants ("**Representatives**"), on a need to know basis, provided that such Representatives are bound by confidentiality obligations to receiving party at least as strict as those of this Agreement, and provided further that such party shall be responsible for and liable to any non-compliance with the requirements of this Agreement by such Representatives.

### **13. Proprietary Rights**

13.1. As between the parties, the Company shall be the exclusive owner of, and Company retains all right, title and interest, including without limitation all patents, copyrights, trade secrets, trademarks, and any other intellectual property rights (whether protectable by any registerable intellectual property protection or not) in and to, the Platform, the Landing Page or other Services, the technology underlying the foregoing, any improvements, updates, upgrades, error-corrections or other modifications thereto made available by Company, any documentation of the foregoing made available by Company, and any derivative work based on any of the foregoing. Except for the limited licenses and rights expressly granted to User hereunder, this Agreement does not grant User any rights to Company's intellectual property (including without limitation in any of the aforementioned items). With respect to Gifts, it is clarified that User is simply purchasing units of such Gifts (and not any rights underlying the Gifts).

13.2. As between the parties, User shall be the exclusive owner of, and User retains all right, title and interest, including without limitation all patents, copyrights, trade secrets, trademarks, and any other intellectual property rights (whether protectable by any registerable intellectual property protection or not) to the User Data and User Content. Without derogating from Section 10, User hereby grants Company a worldwide, royalty-free, non-exclusive and perpetual license to retain, use and transfer User Data in aggregated non-identifying form (alongside aggregated non identifying data of other users). Except for the limited license expressly granted to Company hereunder, this Agreement does not grant Company any rights to User Data or User Content.

13.3. The Company is hereby provided a royalty free, perpetual, worldwide, irrevocable, transferable, sub-licensable right to use any and all feedback, ideas, or input provided by Users (whether protectable by any registerable intellectual property protection or not) and all intellectual property rights therein, for any purpose whatsoever.

### **14. Intellectual Property Indemnification**

Company agrees to defend User from any third-party claims alleging that the Platform or the Professional Services infringe the registered intellectual property rights of such third-party, and indemnify User against the damages and expenses imposed on User by a court of competent jurisdiction hearing such third-party claim, or agreed to in a settlement of such third-party claim attained in accordance with this paragraph. Notwithstanding the foregoing, such indemnification and defense will not apply where the infringement arises from: (i) User's use of the Services in breach of this Agreement; (ii) User Content, or (iii) adherence to specific design instructions of User. Furthermore, Company's indemnification and defense obligations under this Section shall be subject

to User providing Company: (1) a written notice of any indemnifiable matter promptly after User becomes aware of such matter; (2) sole control of the defense and settlement of such indemnifiable matter, and (3) all information and assistance reasonably requested by Company in the handling of such indemnifiable matter (at Company's expense). User shall be kept apprised by Company with respect to the defense and settlement of any such indemnifiable matter, and at its option may participate in the defense and settlement processes with additional legal counsel at its own expense, under User's lead counsel.

## **15. Third Party Services**

15.1. User acknowledges that the Company utilizes certain services and/or infrastructure of third parties ("**Third Party Services**") in order to make its own Services available, inclusive without limitation of (i) the Gift Supply services of Gift Suppliers, (ii) the Delivery Services of Deliverer's, and (iii) hosting services for storage of User Data on external servers controlled by such third party hosting providers (the continuing availability and access to the Platform may be dependent on the continuing availability to Company of the applicable hosting services).

15.2. User further acknowledges that the Services may link to certain websites and applications which are external to the Services, and that use of any such third-party websites and applications is subject to and governed by their applicable third-party terms and conditions alone. User also acknowledges that the Services rely on the transfer of data over communications networks and facilities, and that the Services may be further subject to limitations, delays and other problems inherent in the use of such communications network and facilities.

15.3. USER ACKNOWLEDGES THAT COMPANY DOES NOT CONTROL OR OPERATE THE THIRD-PARTY SERVICES, WEBSITES AND APPLICATIONS, AND THAT COMPANY SHALL HAVE NO LIABILITY WHATSOEVER HEREUNDER, NOR DOES IT MAKE ANY REPRESENTATION OR WARRANTIES, WITH RESPECT TO OR IN CONNECTION WITH ANY THIRD PARTY SERVICES (INCLUDING WITHOUT LIMITATION AS TO LACK OF FLAWS IN CRAFTSMANSHIP, DESIGN OR MATERIAL OF GIFTS, OR WITH RESPECT TO ANY THE USE BY PROVIDERS OF THIRD PARTY SERVICES OF USER DATA), OR WITH RESEPECT TO ANY WEBSITE OR APPLICATION OF A THIRD PARTY TO WHICH THE SERVICES LINK OR REFER, OR WITH RESPECT TO THIRD PARTY COMMUNICATIONS NETWORKS OR FACILITIES.

## **16. Disclaimer**

16.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ASIDE FROM THE SERVICES WARRANTY, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND WHATSOEVER; AND ALL EXPRESS AND IMPLIED WARRANTIES IN CONNECTION WITH THE SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURE, UNINTERRUPTED OR ERROR/BUG FREE USE, AVAILABILITY OR NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. FOR AVOIDANCE OF DOUBT THE COMPANY MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY SERVICES.

## **17. Limitation of Liability**

17.1. IN NO EVENT SHALL THE COMPANY BE LIABLE, WHETHER IN TORT, CONTRACT, OR ANY OTHER THEORY OF LAW, FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF BUSINESS, CORRUPTION OF DATA OR INFORMATION, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT AND/OR THE SERVICES.

17.2. IN NO EVENT SHALL THE COMPANY'S TOTAL LIABILITY TO USER, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LAW, FOR ALL CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED TO EACH ORDER AND THE SERVICES PROVIDED THEREUNDER EXCEED, IN THE AGGREGATE, THE FEES FOR SERVICES PAID TO COMPANY BY SUCH USER IN THE 12 MONTHS PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY IN CONNECTION WITH SUCH ORDER. IT IS CLARIFIED, THAT ANY USE BY A USER MAKING FREE OF CHARGE USE OF THE SERVICES IS AT SUCH USER'S SOLE

RISK, AND COMPANY SHALL HAVE NO DIRECT LIABILITY TO SUCH USER WHATSOEVER IN CONNECTION WITH SUCH FREE OF CHARGE USE.

17.3. The limitations of this entire Section 17 apply notwithstanding anything to the contrary in this Agreement, provided that they shall not apply to any damages arising directly from the Company's willful misconduct or fraud.

## **18. Term and Termination**

18.1. This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section 18 (the "**Term**"). Licences to access and use the Platform shall continue for their respective Subscription Period (as specified in Section 2.2) unless earlier terminated in accordance with this Section 18. All other Services provided under an Order shall continue until they are completed, or until the end of the Term (the earlier).

18.2. A User may terminate all free of charge Services (paid Subscription Periods or other paid Services may not be terminated by User for convenience) by deleting its Account or providing written notice of termination to the Company and then ceasing all use of the Services, in which case the Agreement and the Orders shall terminate immediately upon deletion or receipt of termination notice by the Company (as applicable). Company may, in its sole discretion, terminate the Agreement and any outstanding Orders and/or cease providing the Services or any portion thereof, at any time for convenience or inability to continue providing the Services with an advance 30 day written notice (or without notice, to the extent a User is using the Services free of charge).

18.3. Each of the User and the Company may terminate the applicable Orders (and any license Subscription Periods or other Services thereunder) if the other party materially breaches this Agreement, by providing written notice to the breaching party specifying the breach, such notice to be effective 10 days of its receipt, provided the breach was not cured within such period (or effective immediately upon receipt, to the extent termination is by Company due to breach by a User using the Services free of charge). To avoid doubt, and without limitation, any default on payment of fees due to the Company shall be considered a material breach.

18.4. Only where termination is by Company for convenience in accordance with Section 18.2 or by User for a Company breach in accordance with Section 18.3, the User shall be entitled upon termination to receive a pro-rated refund of (i) any fees pre-paid by such User for any corresponding unused portion of its Subscription Period, (ii) any fees for Professional Services for the corresponding unused portion of the Professional Services, and (iii) any payments for Gifts under such Order which have not yet been ordered by the Company (as applicable). It is clarified, notwithstanding anything to the contrary herein, that (a) any other event of termination shall not affect User's obligations to pay for the entirety of any paid Subscription Period initially contracted for (any Renewal Period to the extent a Non-Renewal Notice has not been provided by the last date for its provision shall also be considered a Subscription Periods initially contracted for) and any other paid Services contracted for, as if no early termination had occurred; and (b) payment for any Gifts already ordered by Company pursuant to an Order shall be due regardless of the circumstances of termination (any Gift units paid for shall belong to User, to avoid doubt).

18.5. Upon termination or expiration of this Agreement or the applicable Subscription Period, for any reason whatsoever, all rights granted to User under this Agreement or the applicable Order with respect to the Platform shall immediately terminate and User shall immediately cease any use of the Platform.

18.6. Company shall make the User Data available for extraction by User during the User's applicable Subscription Period. User acknowledges that following the Subscription Period, the User Data will no longer be available to User through the Platform. Additionally, to avoid doubt any Landing Page created as part of an Order shall be available solely for the period agreed with the Company, and if none was agreed then for the term decided by the Company, or until the termination of this Agreement (the earlier).



18.7. Any provision that by its nature is intended to survive termination or expiration, including without limitation Sections 10.3, 11.2, 12, 14, and 16-20 of this Agreement, shall survive and not be affected by the termination of this Agreement (termination of this Agreement shall not affect the entitlement to any fees or payments due hereunder other than as explicitly specified in Section 18.4).

## **19. Advertisement; Reference**

By approving this Agreement, User also approves receipt from Company of instructional, advertisement, and promotional materials with respect to the Services through any media. Users may revoke their consent in the manner specified in each correspondence or by notifying Company of their revocation at the following e-mail address: [privacy@outgage.co](mailto:privacy@outgage.co). Additionally, if User is an organization, User further consents to Company publicly using the name and logo of User solely in order to identify User as a customer of Company, and to Company publishing details of User's campaign for which the Services were utilized and its results, in both cases on medias and outlets chosen by the Company.

## **20. Miscellaneous**

20.1. The headings used in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of the terms and provisions of this Agreement.

20.2. This Agreement, any applicable Orders, and the DPA incorporated in this Agreement constitute the entire agreement between the parties regarding the use of the Services, and supersedes any previous arrangement, understanding or agreement between the parties, written or oral, relating thereto. In the event of a contradiction between this Agreement and an Order, this Agreement shall govern, unless the Order explicitly specifies that the contradicting term of the Order is intended to govern.

20.3. No modification to this Agreement, nor any waiver of any rights, will be effective unless made in writing and signed by the applicable party.

20.4. Neither party's waiver of any breach or default of any provision of this Agreement shall constitute a waiver of other provisions or any other right hereunder, or a waiver of any subsequent breach or default.

20.5. Unless expressly provided otherwise herein, all remedies hereunder are cumulative and do not exclude any other remedies available by law.

20.6. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in full force and effect.

20.7. This Agreement does not confer any rights on any third party.

20.8. The parties expressly agree that they are independent contractors; and nothing in this Agreement is intended to or shall be interpreted to create a partnership or a joint venture between the parties, or authorise either party to act as agent for the other.

20.9. User shall not, without the prior written consent of the Company, assign this Agreement and/or any of its rights or obligations hereunder, and any unauthorized assignment shall be null and void. The Company may, at any time, freely assign, or sub-contract any or all of its rights or obligations under this Agreement.

20.10. Any disputes or claims arising out of or in connection with this Agreement and/or the Services, will be governed by and construed in accordance with the laws of the State of Delaware, excluding its conflict of law principles. The parties irrevocably agree that the competent courts of the state of Delaware shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement and/or the Services. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A

TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement. Additionally, application of the Uniform Computer Information Transaction Act (UCITA) is excluded from this Agreement.

20.11. Any required or permitted notices hereunder must be given in writing (a) if to the Company, by E-mail to the following address: [notice@outgage.co](mailto:notice@outgage.co), through the notice section of the Company's website: [www.outgage.co](http://www.outgage.co), or to the following address: Parker at 17011 Lincoln Ave. #554 Parker, CO, 80134 by registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier; and (b) if to User by either e-mail to the e-mail or physical address with which User registered for the Services or which was specified in an Order or any User address otherwise provided to the Company by User. Notices will be deemed given within 1 Business Day from the delivery date if sent by E-mail, and within 5 Business Days from the delivery date if sent by other methods permitted herein.

20.12. Company may change the terms of this Agreement by posting new terms, such terms shall be effective in respect of each User immediately once posted; provided however that with respect to any User with a paid Subscription Period or other paid Services, such changes shall not apply to the then current guaranteed period of such Subscription Period or to the specific other paid Services already purchased.

Last updated: [ Feb 14 2022 ].