

09-12-2002



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Docket No.:

55151-023 (BLSB)

Tab settings

To the Honorable Commissioner of Patent

attached original documents or copy thereof.

1. Name of conveying party(ies):

1) Engage, Inc.

2) AdKnowledge, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State Delaware
☐ Other

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other Agreement

Execution Date: September 11, 2001

2. Name and address of receiving party(ies):

Name: Bluestreak.com, Inc.

Internal Address:

Street Address: 76 Hammarlund Way

City: Middletown State: RI ZIP: 02842

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State Delaware
☐ Other

If assignee is not domiciled in the United States, a domestic designation is ☐ Yes ☐ N
(Designations must be a separate document from
Additional name(s) & address(es) ☐ Yes ☐ N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

75/824,048

B. Trademark Registration No.(s)

2,194,027

2,334,551

Additional numbers

☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Scott A. Ouellette

Internal Address: McDermott, Will & Emery

Street Address: 28 State Street

City: Boston State: MA ZIP: 02109

6. Total number of applications and registrations involved:.....

3

7. Total fee (37 CFR 3.41):.....\$ \$90.00

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number:

50-1133

09/11/2002 LINDALL 00000113 75824048

DO NOT USE THIS SPACE

01 FC:481 40.00 OP
02 FC:482 50.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Scott A. Ouellette

Name of Person Signing

Scott A. Ouellette

Signature

August 14, 2002

Date

Total number of pages including cover sheet, attachments, and

21

TRADEMARK

REEL: 2580 FRAME: 0514

AGREEMENT

This Agreement (this "Agreement") is made as of September 11, 2001, by and between Engage, Inc., a Delaware company with its principal office located at 100 Brickstone Square, Andover, Massachusetts 01810 ("Engage"), Bluestreak.com, Inc., a Delaware company with its principal office located at 76 Hammarlund Way, Middletown, Rhode Island 02842 ("Bluestreak"), and AdKnowledge, Inc., a California company and wholly owned subsidiary of Engage ("Sub").

WHEREAS, each of Bluestreak and Engage is in the business of, among other things, providing products and services which allow online marketers and ad agencies to plan, target, serve, track and analyze advertising campaigns; and

WHEREAS, Engage and Sub desire to sell, transfer and convey to Bluestreak designated intellectual property assets as set forth herein.

NOW THEREFORE, in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

1.1 "AdKnowledge Customers" means, as of the date hereof, those customers of Engage or Sub, listed on Exhibit A attached hereto, who have entered into a contract with Engage or Sub for the provision of the AdKnowledge Services and have been provided such AdKnowledge Services during May, June or July 2001.

1.2 "AdKnowledge Employees" means employees of Engage or Sub or of any associated or subsidiary companies of either who, as of the date hereof, are wholly or partly engaged in the AdKnowledge Services.

1.3 "AdKnowledge Intellectual Property" means all intellectual property including, without limitation, all patents, patent applications, concepts, trademarks, copyrights, mask work rights, designs, models, computer code and domain names related to the AdKnowledge Services and expressly set forth on Exhibit C attached hereto, and all trade secrets and other intellectual property rights and all work product, unpublished research and development information, unpatented invention, technical data, and other scientific, technical, or manufacturing information or other tangible expression thereof pertaining thereto, subject to the provisions of Section 2.1(b) hereof.

1.4 "AdKnowledge Services" means the ad management and ad serving services marketed by Engage or Sub as of the Effective Date, including to the AdKnowledge Customers, using the AdKnowledge Intellectual Property and under the AdKnowledge trade name.

1.5 “Bluestreak Products and Services” means the ad management and ad serving services and software marketed and sold by Bluestreak and described more fully in Exhibit D attached hereto.

1.6 “Effective Date” means the date first set forth above in this Agreement.

1.7 “Fee Term” means the one (1)-year period immediately following the expiration of the Transition Period.

1.8 “Japan License” means that certain exclusive license to Engage Technologies Japan, KK, a corporation organized under the laws of Japan and a majority-owned subsidiary of Engage (“*Engage Japan*”), with respect to provision of the AdKnowledge Services in the territory of Japan.

1.9 “Transition Period” means the period commencing upon the Effective Date and expiring at five p.m., East Coast Time, on the date that is thirty (30) days from the Effective Date.

2. OWNERSHIP OF ADKNOWLEDGE INTELLECTUAL PROPERTY

2.1 Transfer of Ownership.

(a) As of the date hereof, each of Engage and Sub hereby irrevocably transfers, conveys and assigns to Bluestreak all of its right, title and interest in the AdKnowledge Intellectual Property free and clear of all liens, restrictions and encumbrances, subject to the provisions of Sections 2.1(b) and 12.2 hereof. Bluestreak shall thereupon have sole and exclusive ownership of the AdKnowledge Intellectual Property and the exclusive right, at its discretion, to apply for or register any patents, mask work rights, copyrights, trademarks and such other proprietary protections with respect to the AdKnowledge Intellectual Property and to maintain and enforce such proprietary protections.

(b) The provisions of Section 2.1(a) notwithstanding, Engage shall be deemed to hold all right, title and interest in and to the AdKnowledge Intellectual Property, solely to the extent required to satisfy its obligations under the Japan License; provided, that (i) Engage shall have no right to sell, assign, pledge, license or otherwise transfer any AdKnowledge Intellectual Property to any third party other than pursuant to the Japan License and the terms of this Agreement, and (ii) upon the termination or expiration of the Japan License, the rights granted pursuant to this Section 2.1(b) shall terminate in full with no other action required on the part of Bluestreak.

2.2 Licenses. Bluestreak hereby agrees to grant to Engage a non-exclusive, non-transferable, royalty-free license to use the AdKnowledge Intellectual Property during the Transition Period for the sole purpose of fulfilling current obligations with AdKnowledge Customers pursuant to the terms of Section 6 (the “Transition License”). In the event that any AdKnowledge Customer independently contacts Engage for the purpose of seeking to enforce the obligations of Engage to provide AdKnowledge Services beyond the terms

of the Transition Period under an agreement between such AdKnowledge Customer and Engage relating thereto, then the parties shall use commercially reasonable efforts to promote Bluestreak Products and Services in lieu thereof and if the parties fail in such efforts, Bluestreak shall then and only then grant a non-exclusive, royalty-free license to Engage to use the AdKnowledge Intellectual Property solely with respect to satisfying such contractual obligations through the close of business on December 31, 2001 (the "*Post-Transition Period License*"). Engage shall use its commercially reasonable efforts to collect the revenues accruing under the Post-Transition Period License, if any, and the revenues shall be offset against the Royalty Payment (as defined in Section 4.1) as set forth in Section 4.1 hereof.

2.3 Closing Conditions; Covenants.

(a) On the Effective Date, each of Engage and Sub will provide to Bluestreak executed assignments in form acceptable to Bluestreak to effectuate the transfer of the AdKnowledge Intellectual Property as set forth herein.

(b) From time to time following the Effective Date, each of Engage and Sub shall take all commercially reasonable actions to facilitate or perfect the transfer and conveyance of the AdKnowledge Intellectual Property pursuant to the terms of Section 2.1, including, without limitation, by executing such documents, rendering such assistance, and taking such other action as Bluestreak may reasonably request, at Bluestreak's expense, to apply for, register, perfect, confirm and protect Bluestreak's ownership rights therein. Subject to Sections 2.1 and 12.2, neither Engage nor Sub (including, without limitation, the subsidiaries, affiliates, agents, and successors in interest of each) shall assert any rights or make any claim of infringement against Bluestreak with respect to any foreign or domestic patent, trademark, copyright, trade secret or other like right of exclusion associated with the AdKnowledge Intellectual Property, nor shall any such party assist any third party in such assertions or claims.

2.4 No Assumption of Liabilities. The parties hereby acknowledge and agree that Bluestreak is not assuming any contracts with respect to the AdKnowledge Services or the AdKnowledge Intellectual Property or the AdKnowledge Employees, and, notwithstanding anything herein to the contrary, in no event shall Bluestreak assume any liabilities with respect to the AdKnowledge Services or the AdKnowledge Intellectual Property or the AdKnowledge Employees.

3. CUSTOMER REFERRALS

3.1 Marketing; Referrals. Subject to the terms and conditions set forth herein, Engage will, and will cause Sub and any other relevant associated or subsidiary company to: (i) exclusively market during the Transition Period and the Fee Term, through sales presentations and otherwise, Bluestreak and the Bluestreak Products and Services to the AdKnowledge Customers, and promote the Bluestreak Products and Services (and no other products or services) as the exclusive substitute for the AdKnowledge Services; (ii) during the Transition Period, join, at Bluestreak's request, any reasonable sales process

initiated by Bluestreak for such Bluestreak Products and Services, including, without limitation, through the participation of AdKnowledge Employees in on-site or telephonic meetings with one or more of the AdKnowledge Customers at mutually convenient times and places, provided that all costs (exclusive of employee time or labor) of Engage's participation in any such sales process shall be borne by Bluestreak; (iii) establish a Web page and link from the Engage Website to the Bluestreak Website in a manner acceptable to each of Engage and Bluestreak and maintain such Web page and link through December 31, 2001; and (iv) undertake good faith, commercially reasonable efforts to develop and implement such further marketing activities as may be mutually agreed to by the parties from time to time. Engage will use only Bluestreak's provided promotional literature in describing Bluestreak's software and services. Engage will not quote end user pricing or terms on behalf of Bluestreak. Engage will promptly notify Bluestreak of any scheduled meetings with AdKnowledge Customers and permit a Bluestreak representative the opportunity to attend such meeting.

3.2 Bluestreak Obligations. Bluestreak will extend to the AdKnowledge Customers who enter into a contract with Bluestreak during the Transition Period one or more components of the Bluestreak Products and Services at commercial rates and terms mutually acceptable to such AdKnowledge Customers and Bluestreak.

3.3 No Guaranty. Nothing in this Agreement will be construed or interpreted as committing or guaranteeing any level of successful referrals to Bluestreak or revenue to Bluestreak.

4. PAYMENT TERMS

4.1 Bluestreak Fees.

(a) Bluestreak will pay Engage as a referral fee a Royalty Payment (as defined herein) with respect to gross revenues recognized by Bluestreak, its affiliates and/or resellers, and solely generated by or resulting from Bluestreak products and services rendered to, or purchased or licensed from such parties by, the AdKnowledge Customers ("Bluestreak Revenues") during the Fee Term; provided, that the Royalty Payment shall become payable to Engage as payment is received by Bluestreak. For purposes hereof, the "Royalty Payment" means (i) for the six (6)-month period following the expiration of the Transition Period, fifteen percent (15%) of Bluestreak Revenues, and (ii) thereafter, for the remainder of the Fee Term, ten percent (10%) of Bluestreak Revenues; provided, that in no event shall the aggregate Royalty Payment payable hereunder exceed the difference of (i) one million dollars (\$1,000,000), minus (ii) the Transition Period Fee (as defined in Section 4.1(b)) paid to Engage, minus (iii) the Transition Period Revenues, as defined in, and collected in accordance with, Section 4.2 hereof, paid to Engage, minus (iv) revenues collected by Engage pursuant to the Post-Transition Period License. Subject to the foregoing terms, within forty-five (45) days of the end of each quarter during the Fee Term, Bluestreak shall remit to Engage the Royalty Payment due as set forth in this Section 4.1(a) with respect to the applicable quarter then ended. Each such

Royalty Payment shall be accompanied by a report signed by an officer of Bluestreak supporting in reasonable detail the calculation of the Royalty Payment, including, without limitation, the revenues recognized and the payments received by Bluestreak from each AdKnowledge Customer during such quarter.

(b) As consideration for Engage's fulfilling previously existing obligations with AdKnowledge Customers during the Transition Period in accordance with Section 6, Bluestreak will pay Engage (i) on the fifteenth (15th) day following the Effective Date, one hundred thirty thousand dollars (\$130,000) and (ii) on the last day of the Transition Period, one hundred thirty thousand dollars (\$130,000) (collectively, the "Transition Period Fee").

4.2 Transition Period Revenues. Engage accounts receivable with respect to AdKnowledge Services provided during the Transition Period shall accrue to the benefit of Engage (the "Transition Period Revenues"). Engage shall use its commercially reasonable efforts to collect the Transition Period Revenues. The Transition Period Revenues collected by Engage shall be offset against the aggregate Royalty Payment. As soon as practicable following the last day of the Transition Period, and in no event later than thirty (30) days thereafter, and monthly thereafter until the payment in full by Bluestreak of the Royalty Payment, Engage shall provide to Bluestreak a report signed by an officer of Engage supporting in reasonable detail the calculation of the Transition Period Revenues, including, without limitation, the revenues recognized by Engage during the Transition Period with respect to the AdKnowledge Services, and payments collected and accounts receivable with respect thereto for the applicable reporting interval.

4.3 Compliance.

(a) Engage may, during the Fee Term and for a twelve (12) month period thereafter and no more than twice in the aggregate, upon no fewer than fifteen (15) days prior written notice to Bluestreak, and at a time reasonably acceptable to Bluestreak, cause a certified accountant or other third party audit professional acceptable to Bluestreak (such consent not to be unreasonably withheld) to review the books and records of Bluestreak solely to the extent reasonably required to ensure Bluestreak's compliance with Section 4.1(a). Such audit or inspection team shall be subject to, and bound by, the provisions of Section 8. Bluestreak agrees to reasonably cooperate in any audit, including, but not limited to, by providing the designated audit or inspection team access to the relevant Bluestreak records, logs and facilities. If any audit reveals that Bluestreak underpaid amounts due to Engage hereunder, then Bluestreak shall immediately pay to Engage any such deficiency with interest thereon at a rate equal to the lower of one and one-half percent (1.5%) per month or such lower rate as shall be the maximum rate permitted by law from the date such Royalty Payment became payable until paid. If any audit reveals that Bluestreak overpaid amounts due to Engage hereunder, then Engage shall immediately remit to Bluestreak any such overpayment with interest thereon at a rate equal to the lower of one and one-half percent (1.5%) per month or such lower rate as shall be the maximum rate

permitted by law from the date such overpayment was made until remitted. Engage shall bear all costs associated with an audit pursuant to the provisions of this Section 4.3(a). The provisions of this Section 4.3(a) shall terminate in full upon the payment in full by Bluestreak of the Royalty Payment.

(b) Bluestreak may, during the Fee Term and no more than twice in the aggregate, upon no fewer than fifteen (15) days prior written notice to Engage, and at a time reasonably acceptable to Engage, cause a certified accountant or other third party audit professional acceptable to Engage (such consent not to be unreasonably withheld) to review the books and records of Engage solely to the extent reasonably required to ensure Engage's compliance with Section 4.2 hereof. Such audit or inspection team shall be subject to, and bound by, the provisions of Section 8. Engage agrees to reasonably cooperate in any audit, including, but not limited to, by providing the designated audit or inspection team access to the relevant Engage records, logs and facilities. If any audit reveals that Engage underpaid amounts due to Bluestreak hereunder, then Engage shall immediately pay to Bluestreak any such deficiency with interest thereon at a rate equal to the lower of one and one-half percent (1.5%) per month or such lower rate as shall be the maximum rate permitted by law from the date such amounts became payable until paid. If any audit reveals that Bluestreak overpaid amounts due to Engage hereunder, then Engage shall immediately remit to Bluestreak any such overpayment with interest thereon at a rate equal to the lower of one and one-half percent (1.5%) per month or such lower rate as shall be the maximum rate permitted by law from the date such overpayment was made until remitted. Bluestreak shall bear all costs associated with an audit pursuant to the provisions of this Section 4.3(b). The provisions of this Section 4.3(b) shall terminate in full upon the payment in full by Bluestreak of the Royalty Payment.

5. EMPLOYEES

5.1 AdKnowledge Employees.

(a) Nothing in this Agreement shall be construed or interpreted as creating any employment relationship between Bluestreak and the AdKnowledge Employees or transferring any existing employment relationships from Engage, Sub or any associated or subsidiary companies of either to Bluestreak. For the avoidance of doubt the transfer of ownership of the AdKnowledge Intellectual Property is not the transfer of a discrete economic entity which will retain its identity in the ownership of Bluestreak.

(b) The parties hereby acknowledge and agree that Bluestreak has no desire to conduct operations in France. Engage shall as soon as practicable following the Effective Date, of its own accord and at its sole expense, notify employees of Engage France of the dissolution of such company.

(c) The parties expressly acknowledge and agree, however, that commencing on the Effective Date and from time to time during the Transition

Period, Bluestreak may interview and extend offers of employment in connection with Bluestreak Products and Services to any AdKnowledge Employees set forth on Exhibit B hereto, provided that such Employee's employment with Bluestreak shall not commence prior to the first day following the completion of the Transition Period without Engage's prior written consent, and provided, further, that Bluestreak shall make each such offer of employment contingent on Engage's receipt of a written resignation from the applicable AdKnowledge Employee.

5.2 Waiver. In the event of recruitment by Bluestreak of any AdKnowledge Employees during the Transition Period, each of Engage and Sub shall, and Engage shall use its best efforts to cause CMGI, Inc. to, execute a letter committing to not enforce any non-competition agreement between each such company with respect to the employment by Bluestreak of any such AdKnowledge Employee.

6. TRANSITION PERIOD

6.1 Obligations of Engage. In addition to the customer referral obligations pursuant to Section 3.1 hereof, during the Transition Period:

(a) Engage and Sub will each provide the AdKnowledge Services in the ordinary course of business and consistent with past practice, including, but not limited to, invoicing and collection of fees with respect to the provision of any AdKnowledge Services during the Transition Period, provided, however, that the parties hereby acknowledge that Engage has notified all AdKnowledge Employees of possible termination and that therefore Engage cannot guarantee that all such employees will remain with Engage during the Transition Period, which may impact the level of service that Engage can provide during the Transition Period.

(b) Neither Engage nor Sub will enter into any agreement or other understanding to provide AdKnowledge Services or acquire customers for the AdKnowledge Services. Following the expiration of the Transition Period, Engage will cease providing AdKnowledge Services, subject to the terms and provisions hereof, including, without limitation, Section 2.2.

(c) Engage and Sub will, as soon as practicable following the Effective Date, notify the AdKnowledge Customers of the termination of the AdKnowledge Services, effective as of the last day of the Transition Period, such notice to be in form and substance acceptable to Bluestreak (such approval not to be unreasonably withheld), and promote Bluestreak as the exclusive substitute for the AdKnowledge Services as set forth in Section 3.1.

(d) As soon as practicable, and subject to the obligations of Engage to promote the Bluestreak Products and Services as the exclusive substitute of the AdKnowledge Services pursuant to Section 2.2, Engage will notify Bluestreak of any AdKnowledge Customers independently contacting Engage with respect to continuing Engage's provision of the AdKnowledge Services beyond the

expiration of the Transition Period pursuant to the terms of existing contracts.

6.2 AdKnowledge Employees. During the Transition Period, Engage shall pay all compensation expenses associated with the AdKnowledge Employees then employed by Engage, including, without limitation, salary and benefits. In no event shall Bluestreak be obligated to make any payments with respect to the provisions of this Section 6 other than the Transition Period Fee and reasonable expenses incurred in connection with customer referrals pursuant to Section 3.1 hereof. In no event during the Transition Period shall the AdKnowledge Employees be considered or held out as employees of Bluestreak.

6.3 Data Transfer. Bluestreak and Engage shall cooperate to resolve the disposition of data held by Engage with respect to the AdKnowledge Customers in a manner consistent with applicable law and regulations. Nothing in this Agreement shall obligate Engage to take any action that, in Engage's reasonable discretion, could be found to violate any law, regulation, self-regulatory principle of the Network Advertiser Initiative, policy of the Federal Trade Commission, or contract with an AdKnowledge Customer or third party.

7. NON-COMPETITION

Neither Engage nor Sub will, and Engage shall cause its wholly-owned or controlled subsidiaries to not, for a period of eighteen (18) months following the Transition Period, market or sell services that compete with the AdKnowledge Services, without the prior written consent of Bluestreak, provided that the provisions of this Section 7 shall not apply to Engage or to Engage Japan with respect to existing obligations under the Japan License. All services marketed by Engage or Sub as of the Effective Date other than the AdKnowledge Services shall be deemed non-competitive for purposes of this Agreement.

8. CONFIDENTIALITY

8.1 Confidentiality. Each party acknowledges that, in the course of its performance under this Agreement, it shall obtain certain information relating to the other party's business which is confidential and proprietary information of the other party and is not generally known to the public, including, without limitation, the terms of this Agreement, technical and business information relating to either party's technology, products, research and development, production, manufacturing and engineering processes, computer software, business plans, finances, customers and employees (collectively, "Confidential Information"). Confidential Information shall include any information which is identified orally or in writing by the disclosing party to be confidential, or which the receiving party reasonably believes or should reasonably believe to be a trade secret of the disclosing party.

8.2 Treatment of Confidential Information. All Confidential Information shall remain the sole property of the disclosing party and the receiving party shall have no rights to the Confidential Information of the disclosing party, except as otherwise provided in this Agreement. Each party hereby consents to the disclosure of its Confidential Information to the employees or consultants of the other as is reasonably necessary in order to allow the other party to perform under this Agreement and obtain the benefits hereof. Each party further agrees, subject to the terms of this Agreement, to treat all Confidential Information of the other in the same manner as it treats its own Confidential Information, and in no event with less than a commercially reasonable standard of care. Each party also agrees to the disclosure of the terms of this Agreement to legal and financial advisors who have a duty of confidentiality to such disclosing party. Not in limitation of the foregoing, each party agrees that it will not use any Confidential Information of the other party except as permitted by this Agreement and will not disclose any Confidential Information of the other party to any third party except as permitted by this Agreement, without the prior written consent of the other party.

8.3 Exceptions. Notwithstanding any other provision of this Agreement, information shall not be deemed Confidential Information, and the receiving party shall have no confidentiality obligation with respect to any information which: (i) was in the receiving party's possession or was known by the receiving party prior to its receipt from the disclosing party; (ii) is or becomes publicly known through no act or omission of the receiving party; (iii) is received by the receiving party without restriction on disclosure from a third party who disclosed the information without violating any confidentiality restriction; or (iv) is independently developed by the receiving party without reference to the Confidential Information and without violation of any confidentiality restriction. Each party is permitted to disclose Confidential Information if pursuant to statute, regulation, or the order of a court of competent jurisdiction, provided the receiving party divulges only so much of the Confidential Information as is necessary and only to such party or parties as may be required, and provided further that such receiving party previously notifies the disclosing party such that the disclosing party may take appropriate protective measures.

9. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

9.1 Representations of Engage, Sub and Bluestreak.

(a) Each party hereby represents and warrants to the other as follows: (i) such party is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which qualification is required; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid and legally binding obligation of each such party and is enforceable against such party in accordance with its respective terms; and (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate or conflict with, result in a breach of, or constitute a default under, any agreement, contract or other arrangement to which such party is a party or is bound.

(b) Each of Engage and Sub, jointly and severally, represents and warrants to Bluestreak that: (i) they collectively own or possess exclusive licenses or other rights to use all AdKnowledge Intellectual Property; (ii) no claim is pending or, to the knowledge of Engage, threatened to the effect that any AdKnowledge Intellectual Property infringes upon or conflicts with the asserted rights of any other person under any intellectual property rights and, to the knowledge of Engage, there is no basis for any such claim (whether or not pending or threatened), provided, that Bluestreak hereby acknowledges that any trademark applications may be opposed in the course of routine registration proceedings, (iii) to Engage's knowledge, all issued patents and registered trademarks and copyrights held by Engage or Sub with respect to the AdKnowledge Intellectual Property are valid and subsisting, (iv) Bluestreak (including its subsidiaries, affiliates, agents, and successors in interest) shall not be obligated to obtain any license or other grant to make, use, sell, copy, license, or transfer any part of the AdKnowledge Intellectual Property, subject to any third-party technology that may be required for the operation thereof and is not conveyed herewith, (v) no officers or authorized persons of Engage or Sub, or any associated or subsidiary company of Engage or Sub employing AdKnowledge Employees, have represented to any or all of the AdKnowledge Employees that their employment contracts or relationships would be assigned to or assumed by or novated with Bluestreak, whether by operation of law or otherwise, and (vi) the Japan License is limited to the territory of Japan, and Engage Japan possesses the exclusive rights to all AdKnowledge Intellectual Property and commercialization rights in Japan.

9.2 Disclaimers. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NO PARTY MAKES ANY REPRESENTATION OR WARRANTIES (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT) TO THE OTHER OF ANY KIND OR NATURE REGARDING ANY PRODUCT OR SERVICE, INCLUDING, BUT NOT LIMITED TO, THE ADKNOWLEDGE SERVICES, THE BLUESTREAK PRODUCTS AND SERVICES AND THE ADKNOWLEDGE INTELLECTUAL PROPERTY.

10. INDEMNIFICATION

10.1 Engage Indemnity. Engage, at its own expense, shall defend, indemnify and hold harmless Bluestreak, its directors, officers, stockholders, employees, agents, representatives and affiliates (collectively the "Bluestreak Indemnities"), from and against any and all losses, obligations, liabilities, damages, claims, civil and criminal monetary penalties, deficiencies, costs and expenses (including the amount of any settlement and all reasonable legal and other professional fees and other expenses incurred in connection with the investigation, prosecution or defense of the matter), which may be asserted against or sustained or incurred by the Bluestreak Indemnities arising out of or related to: (i) any inaccuracy in, misrepresentation, breach or alleged breach of any of the representations, warranties, agreements and covenants made by Engage in this Agreement; and (ii) gross negligence or willful misconduct of Engage.

10.2 Bluestreak Indemnity. Bluestreak, at its own expense, shall defend, indemnify and hold harmless Engage, its directors, officers, stockholders, employees, agents, representatives, subsidiaries and affiliates (collectively the “Engage Indemnitees”), from and against any and all losses, obligations, liabilities, damages, claims, civil and criminal monetary penalties, deficiencies, costs and expenses (including the amount of any settlement and all reasonable legal and other professional fees and other expenses incurred in connection with the investigation, prosecution or defense of the matter), which may be asserted against or sustained or incurred by the Engage Indemnitees arising out of or related to: (i) any inaccuracy in, misrepresentation, breach or alleged breach of any of the representations, warranties, agreements and covenants made by Bluestreak in this Agreement; and (ii) gross negligence or willful misconduct of Bluestreak.

10.3 Procedures. The indemnification obligations of the parties as described in this Section 10 are contingent on the party seeking indemnification providing: (a) written notice within twenty (20) days of receiving a claim; (b) all necessary information within its control for the indemnifying party to conduct a defense; and (c) the indemnifying party with sole control of defense and settlement negotiations. The indemnified party may at its sole option and at its own expense engage its own separate counsel to act as co-counsel on its behalf.

11. LIMITATIONS OF LIABILITY

In no event shall either party be liable for any incidental, indirect, special or consequential damages whatsoever (including, but not limited to, lost profits), even if the other party has been advised, knew or should have known of the possibility of such damages, in connection with a breach or default under this Agreement.

12. TERMINATION

12.1 Termination for Cause. Either party may, upon fifteen (15) days’ notice to the other party, terminate this Agreement for cause, if the other party breaches any payment or other material obligation hereunder and does not cure such breach within such fifteen (15)-day period. Sections 4.1 (solely with respect to referrals made prior to the termination of this Agreement), 4.2, 4.3, 7 through 13, and 15 through 18 shall survive termination of this Agreement.

12.2 Remedy. In the event of a termination of this Agreement by Engage for cause pursuant to Section 12.1 hereof and subject to the 15-day cure period set forth therein, in addition to the other remedies Engage may elect, Bluestreak shall transfer and convey all right, title and interest in and to all AdKnowledge Intellectual Property to Engage, as well as any patents, mask work rights, copyrights, trademarks, and such other proprietary protections with respect to the AdKnowledge Intellectual Property acquired or created after conveyance of the AdKnowledge Intellectual Property from Engage to Bluestreak. In addition, upon such occurrence, Bluestreak will provide to Engage, upon Engage’s reasonable demand, executed assignments with respect to all such AdKnowledge Intellectual Property. In the event of reconveyance of the AdKnowledge

Intellectual Property under this Section 12.2. Bluestreak shall have no right, whether arising by implication or any other theory, in the AdKnowledge Intellectual Property.

13. SPECIFIC PERFORMANCE

Notwithstanding anything else contained in this Agreement, the parties agree that failure to perform the obligations undertaken in connection with this Agreement would cause irreparable damage, and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching party may be entitled, at law or in equity, the non-breaching party shall not be entitled to an order of specific performance to compel performance of such obligations, without proof of irreparable harm or adequacy of remedy, in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction.

14. PUBLICITY

Except as provided below, neither party shall issue any press release relating to this Agreement, without the prior written consent of the other party. The foregoing notwithstanding, (i) Bluestreak may issue a press release as soon as practicable following the Effective Date, subject to the approval of Engage (such approval not to be unreasonably withheld, delayed or denied), and (ii) Engage may describe this Agreement and the relationship contemplated herein in any filings with the Securities and Exchange Commission, to the extent such disclosure is deemed necessary or appropriate by Engage or as otherwise required by law or order of any governmental body. Nothing herein to the contrary, either party shall be able to disclose the name of the other in connection with the solicitation of the AdKnowledge Customers and the promotion of the Bluestreak Products and Services.

15. RELATIONSHIP

Engage and Bluestreak are independent contractors. This Agreement shall not make either party the legal representative or agent of the other party. Neither party shall have any right or authority to make any affirmation, representation or warranty or to assume, create or incur any liability or obligation of any kind, express or implied, for or on behalf of the other. Except as otherwise provided in this Agreement, each party shall be solely responsible for all costs, expenses and liabilities it may incur in connection with this Agreement and neither party shall be liable or obligated to the other for any such revenue sharing, costs, expenses or liabilities.

16. GOVERNING LAW

This Agreement shall be governed by and interpreted under the laws of The Commonwealth of Massachusetts without giving effect to the choice of law principles thereof.

17. [Reserved]

18. ENTIRE AGREEMENT

This Agreement (together with its Exhibits) constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior agreements or understandings with respect to its subject matter, and may not be modified except by a writing signed by both parties.

19. ASSIGNMENT

This Agreement is between the named parties only and the rights and obligations under this Agreement do not apply to affiliates of either party. Neither this Agreement nor any of the rights or obligations of a party hereunder may be assigned by either party without the prior written consent of the other party, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and such assignment shall be null and void; provided, that Engage shall have the right to transfer this Agreement to CMGI, Inc., after the Transition Period. This Agreement and all Schedules and Exhibits hereto shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

20. SEVERABILITY

Each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If there is any conflict between any term, condition, or provision of this Agreement and any statute, law, ordinance, order, rule, or regulation, the latter shall prevail; provided, that any such conflicting term, condition, or provision shall be curtailed and limited only to the extent necessary to bring it within the legal requirements and the remainder of this Agreement shall not be affected or impaired thereby.

21. COUNTERPARTS

This Agreement may be executed in one or more counterpart copies, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

22. WAIVER

The waiver of one breach or default hereunder shall not constitute the waiver of any subsequent breach or default.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives as of the date first set forth above.

ENGAGE, INC.

By: _____
Name: _____
Title: _____

BLUESTREAK.COM, INC.

By: Annette Tonti
Name: Annette Tonti
Title: Chairman

ADKNOWLEDGE, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives as of the date first set forth above.

ENGAGE, INC.

By: 

Name:

Title:

BLUESTREAK.COM, INC.

By: _____

Name:

Title:

ADKNOWLEDGE, INC.

By: 

Name:

Title:

EXHIBIT C

ADKNOWLEDGE INTELLECTUAL PROPERTY

1. The following trademarks and any related applications and registrations:

Please note that changes proposed to this pictorial table are included immediately following the table.

Trademark Name	Client Name	Country Name	Application No.	Filing Date	Pub. Date	Registration No.	Reg. Date	Status
EANALYTICS	Adknowledge, Inc.	Canada	1053597	04-Apr-2000				Pending
DATACOMPASS	Adknowledge, Inc.	United States of America	75/824048	15-Oct-1999				Pending
EANALYTICS	Adknowledge, Inc.	United States of America	75/818969	07-Oct-1999				Pending
ADKNOWLEDGE	Adknowledge, Inc.	United States of America	75/509123	25-Jun-1998	04-Jan-2000	2334551	28-Mar-2000	Registered
SMART BANNER	Adknowledge, Inc.	European Community	282434	21-Jun-1996	15-Jun-1998	282434	26-Apr-1999	Registered
SMART BANNER	Adknowledge, Inc.	Japan	69226/1996	21-Jun-1996	10-Dec-1998	4198697	16-Oct-1998	Registered
CLICKOVER	Adknowledge, Inc.	United States of America	75/167595	17-Sep-1996	09-Dec-1997			Abandoned
SMART BANNER	Adknowledge, Inc.	Canada	815932	21-Jun-1996	29-Sep-1999			Published
DATACOMPASS	Adknowledge, Inc.	Japan	2000-34025	03-Apr-2000				Pending
DATACOMPASS	Adknowledge, Inc.	European Community	001602861	04-Apr-2000				Pending
DATACOMPASS	Adknowledge, Inc.	Canada	1053598	04-Apr-2000				Pending
EANALYTICS	Adknowledge, Inc.	Japan	2000-34024	03-Apr-2000				Pending
EANALYTICS	Adknowledge, Inc.	European Community	001602812	04-Apr-2000				Pending
SMART BANNER	Adknowledge, Inc.	United States of America	75/041457	01-Jan-1996	26-Jul-1996	2194027	06-Oct-1998	Registered

NOTE:

- * Included in Japan License (Section 2.1(b))
 - EANALYTICS has been abandoned
 - CLICKOVER is registered to ClickOver, Inc. and has been abandoned
 - SMART BANNER is registered to Focalink Communications, Inc.
2. All computer software applications, in source, object, and executable code format, related to the AdKnowledge Service, including but not limited to:
- a. ADS,
 - b. DataDNA,
 - c. DataCompass,
 - d. Advisor,
 - e. Reporter,
 - f. Planner,
 - g. SmartBanner,
 - h. and all other products or systems associated solely with the ad servers and reporting systems used to operate the AdKnowledge Services, but excluding any computer software applications and code licensed or otherwise obtained from a third party (i.e., an entity other than AdKnowledge, Inc.).
3. All available documentation relating to such computer software applications and code
4. All available marketing materials relating to the AdKnowledge Services

5. The following internet domain names relating to the Adknowledge Services,
www.adknowledge.com, www.focalink.com, www.smartbanner.com.