

This Terms and Conditions ("T&C"), governs User's access to and use of the Ad Tool. By registering for or using the Ad Tool, User (on behalf of yourself or the business you represent) agrees to be bound by this T&C. "We," "us," "our," and "Brainbees" means the applicable Brainbees Solutions Limited as Contracting Party and any of its applicable Affiliates. "User(s)," "you," or "your" means the applicant (if registering for or using the Ad Tool as an individual) or the business employing the applicant (if registering for or using the Ad Tool as a business) as Contracting Party.

This document is an electronic record in terms of Information Technology Act, 2000 and rules there under as applicable and the amended provisions pertaining to electronic records in various statutes as amended by the Information Technology Act, 2000. This electronic record is generated by a computer system and does not require any physical or digital signatures.

Please read the following terms and conditions very carefully as your use of service is subject to your acceptance of and compliance with the following terms and conditions.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES INTENDING TO BE BOUND LEGALLY, AGREE AS FOLLOWS:

1. DEFINITIONS:

Definitions: In these Terms and Conditions, unless the context otherwise requires, the following words and phrases shall bear the meaning as ascribed to them as under:

"Ad Tool" shall mean proprietary advertisement serving tool i.e. Firstcry Adbees owned by Brainbees.

"Applicable Law" means the substantive or procedural laws of India, including all legislations, acts, rules, notifications, laws, statutes, orders, decrees, judgments, injunctions, ordinances, directives, regulations, codes, requirements, permits, licenses, approvals, instructions, standards of any Government Instrumentality, having the force of law.

"Brand" shall mean brand name, logo, identifiable characters and/or trademark (s) used and registered under the name of the User(s).

"Confidential Information" shall mean all and any non-public, commercially proprietary or sensitive information, whether or not designated as "confidential" or "proprietary" or similar designation of a Party which is acquired by the other Party before or after the date of this Terms and Conditions including, *inter alia*, information in relation to the products, business, operations, financial conditions, business strategies, assets, marketing, processes of the other Party, any other related information, trade secrets acquired pursuant to the Terms and Conditions, or exercising its rights or performing its obligations under this Terms and Conditions, or which relates to the contents of this Terms and Conditions (or any Terms and Conditions or arrangement entered into pursuant to this Terms and Conditions).

“Content” shall mean advertisement material provided by the User(s) which mainly comprises of any/all text, image, gif, video, audio, audio-video content including without limited to infographics, discount callouts, content claims photo galleries, advertisement, etc. provided by the User(s) under these Terms and Conditions, to be used solely for the campaign, promotion, advertisement, publicity and marketing of the Brand of the User on the Platform.

“Intellectual Property Rights” means and includes (i) all rights, title, and interest under any statute or under common law including trademarks rights, patent rights; copyrights including pending applications as well as moral rights; and any similar rights in respect of Intellectual Property, anywhere in the world, whether negotiable or not; (ii) any licenses, permissions and grants in connection therewith; (iii) applications for any of the foregoing and the right to apply for them in any part of the world; (iv) right to obtain and hold appropriate registrations in Intellectual Property; (v) all extensions and renewals thereof; and (vi) causes of action in the past, present or future, related thereto including the rights to damages and profits, due or accrued, arising out of past, present or future infringements or violations thereof and the right to sue for and recover the same.

“Person” shall mean any individual, User(s), firm, trust, body corporate and entity whether incorporated/located or not, in India.

“Platform” shall mean online platform www.firstcry.com and its’ mobile application.

“Promotional Rights” shall mean and include the non-exclusive right of Brand to use the Promotional Material only for promotion of the Brand for such period of time as may be mutually agreed between the Parties.

“Services” shall mean any/all activity, services carried out by Brainbees as per the details mentioned under User(s) the terms and conditions of this Terms and Conditions.

2. SCOPE OF WORK:

2.1. The User(s) hereby appoints and engages Brainbees for carrying out the Services, as detailed in Annexure A, which shall be mutually agreed between the Parties.

2.2. During the Term and subject to the terms of this Terms and Conditions, Brainbees will make available to User(s) Ad Tool i.e. Firstcry Adbees which utilizes AI algorithms and machine learning to serve Content of User(s) on the Brainbees Platform based on pre-defined targeting duly defined by the User(s) which would enable the User(s) to place Content on Platform (“Services”). We reserve the right to determine all aspects of the Services, and may modify, restrict, or discontinue any services and tools offered herein at any time without notice. In connection with the management or operation of the Services, Brainbees may reject or remove any Content, or suspend any Campaign without notice. Brainbees will have no liability for any such action. Brainbees may also reject or remove any Content or suspend any Campaign if: (a) the Content or Campaign violates the Brainbees Policies or this Terms and Conditions; (b) your account has been, or our controls identify that it may be used for

deceptive or fraudulent or illegal activity; (c) Brainbees believes the Content or Campaign would expose Brainbees to liability; or (d) for other risk management reasons; or (e) exhaustion of credit limit/balance in wallet.

- 2.3. The Adbees Tool is an auction based model wherein User(s) shall be ranked based on the competitive bids received for targeting and Adbees Tool shall publish Content on the Platform of the successful bidder. Notwithstanding Brainbees' acceptance and execution of the Terms and Conditions, Brainbees may remove or refuse to publish or link to any material which is in its sole discretion be considered defamatory, misleading, abusive, unlawful, or otherwise inappropriate or that promotes competitive services or in violation of Brainbees' practices and against Brainbees' reputation.
- 2.4. Brainbees shall retain right to modify or amend the terms and conditions post mutual discussion and agreement with User.
- 2.5. Notwithstanding anything contained herein under this Terms and Conditions, the Parties hereby agree that this Terms and Conditions is on a non-exclusive basis and Brainbees shall have the right to have similar engagement with any other third party who are in the same line business or who provide similar kind of services as that of the User(s), including User(s)'s direct competitors.

3. **GRANT OF RIGHTS:**

- 3.1. The User(s) hereby grants Brainbees on non-exclusive, non-assignable, non-saleable basis the right to use the Brand including the trademarks, logos, copyrights and/or other Intellectual Property Right, solely for such purposes as may be required under the said Terms and Conditions.
- 3.2. The User(s) represents and warrants that the User(s) has obtained all necessary and required permissions and licenses to grant aforesaid licenses to Brainbees.
- 3.3. The User(s) shall ensure that and also represents that (i) all content, materials and all goods supplied/provided by the User(s), shall comply with all applicable laws and regulations including Digital Personal Data Protection Act, 2023; (ii) User(s) materials shall not be indecent, obscene, illegal, defamatory, discriminatory, misleading, harmful or offensive or is otherwise in violation of any right of any third party (iii) User(s) materials shall neither contain nor transmit any virus, Trojan horse, malicious and disabling code or any other harmful content to the Brainbees server(s) where either the User(s) materials are stored or where the platform is hosted; and (iv) User(s) represents, and Brainbees is relying on User(s)'s representation, that the User(s) has the right to publish the User(s) materials.

4. **CONSIDERATION**

- 4.1. The User(s) shall be required to communicate any discrepancies in respect of the Valid Invoices (with respect to price or quantum of services) within 5 (five) days, beyond which, if

any discrepancy is noticed, Brainbees shall not be required to pass over the benefit of any credit or benefit related to such discrepancy.

- 4.2. All amounts due under this Terms and Conditions exclude any applicable indirect taxes including Central Goods and Services Tax, State Goods and Services Tax, Integrated Goods and Services Tax. Such amounts (including but not limited to service fee, damages, interest payments on overdue amounts) shall be charged additionally to the User(s) and the User(s) shall be required to pay such amounts. Fee shall be payable by the User(s) as per **Annexure A**.

5. REPRESENTATION AND WARRANTIES:

The Parties herein represent and warrant that:

- 5.1. it has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Terms and Conditions and has been fully authorized by all requisite corporate actions to do so;
- 5.2. its signing of this Terms and Conditions has been fully authorized by all requisite corporate actions;
- 5.3. this Terms and Conditions shall be duly executed and upon execution shall constitute a legal, valid and binding contract, enforceable in accordance with its terms;
- 5.4. it is not in violation of any contract, law, regulation, order or decree or that it is hindered or obstructed in any manner by any contract, law, regulation, order or decree in effectively performing its obligations under the terms and conditions of this Terms and Conditions;
- 5.5. it will perform its obligations under this Terms and Conditions in compliance with all Applicable Laws, necessary for the performance of its obligations hereunder;
- 5.6. it will provide such cooperation as reasonably necessary in order to give full effect to the provisions of this Terms and Conditions;

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. Each Party shall, solely and exclusively own throughout the universe in perpetuity, including renewal and extension periods, their respective Intellectual Property.
- 6.2. Except for User(s) intellectual property, Brainbees is and will be the exclusive owner of all the Intellectual Property Right(s) contained in the Ad Tool throughout the universe, in all languages formats and media, whether now known or hereafter devised, in perpetuity..
- 6.3. The User(s) is the sole and exclusive owner of any and all Intellectual Property Right(s) of any kind and any other ancillary and underlying rights held / owned by it in and with respect

to the Brand and any/all platforms upon which the Content shall be broadcasted/ showcased/ displayed. All rights, title and interest in and to any Intellectual Property, all associated goodwill and / or other proprietary right in and with respect to the Brand now existing or hereinafter created pursuant to this Terms and Conditions, shall remain vested in the User(s).

- 6.4. The Parties agree and acknowledge that each Party shall, under this Terms and Conditions, give only a limited right to use (if any) their respective Intellectual Property Right for such purposes as detailed under this Terms and Conditions to the other Party.
- 6.5. Notwithstanding anything contained in this Terms and Conditions, assignment of any/all such limited rights by either Party pursuant to the subject matter herein, shall not be construed as conferring ownership of such rights to other Party in any manner whatsoever.

7. **CONFIDENTIALITY:**

- 7.1. **“Confidential Information”** means any/all information, proprietary materials or Intellectual Property Rights (in every form and media) made available by a Party (**“Disclosing Party”**) to, disclosed to or otherwise obtained by the other Party (**“Receiving Party”**) in connection with this Terms and Conditions, including, but not limited to, information relating to the Party’s existing or contemplated Services and/ or service plans, trade secrets, technology, processes, inventions, data, designs, techniques, methodologies and concepts, reports, analyses, costs, prices or discount structure, names, customer lists, finances, administrative, marketing plans, business plans, strategic plans or business opportunities, designs, data collected, reports, statistic and Content prepared under this Terms and Conditions and technical specifications, documentation, and other materials contained in or related to any of the foregoing.
- 7.2. Use of Confidential Information
- a. Receiving Party undertake that it shall keep strictly secret and confidential and shall not disclose, disseminate, divulge or reveal during the continuance of this Terms and Conditions, the contents of this Terms and Conditions, the Confidential Information disclosed, communicated or given by the Disclosing Party, whether disclosed or communicated to the Disclosing Party under this Terms and Conditions or gained or otherwise acquired by the Disclosing Party under or by virtue of or as a result of the implementation of its obligations under this Terms and Conditions.
 - b. The Receiving Party shall disclose Confidential Information only to those of its employees with a need to know such information to perform its obligations hereunder and shall not provide access to any Confidential Information to any employee until it has first advised such employee of the confidential nature of such information and require that employee to maintain it in confidence; provided that the Receiving Party shall be responsible for any breaches of this clause by its employees. The Disclosing Party shall in addition to its other legal rights and remedies be entitled to seek appropriate injunctive relief in the event of breach or threatened breach of this clause.

- c. Neither Receiving Party, nor its directors, officers, employees, agents and/ or representatives employed or retained by it shall make statements to the press or any media service regarding the Disclosing Party, the Terms and Conditions, the Content, the operations and activities without prior written approval of Disclosing Party.
- 7.3. Confidential Information excludes any such information which (i) is known to the public; (ii) is lawfully acquired by the Receiving Party without the confidentiality obligations; (iii) was known to the Receiving Party without breach hereof; (iv) was or is independently developed by the Receiving Party; or (v) is required to be disclosed by governmental or judicial order, in which case the Party so required shall give the other Party prompt written notice, where possible, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment and also to enable the other Party seek a protective order or other appropriate remedy.
- 7.4. It is hereby agreed between the Parties that this Clause shall survive even upon the termination of this Terms and Conditions by either of the Party.

8. INDEMNITY AND LIMITATION OF LIABILITY:

- 8.1. The User(s) shall indemnify and hold harmless Brainbees including its assigns, agents, representatives, from and against any/all direct claims, liabilities, actions, suits, proceedings (including any proceeding brought before any court, regulatory body, arbitration panel or other tribunal), judgments or expenses including reasonable attorney's fees, other expenses of litigation (each, a "Claim", collectively the "Claims") arising out of or in any way connected with:
- a. any direct breach of any representation, warranty and obligations under this Terms and Conditions and/or any terms under this Terms and Conditions.
 - b. reliance of Brainbees on the material supplied by the User(s) to Brainbees for rendition of the Services.
 - c. any complaints arising from User(s)'s customers regarding the goods provided by User(s).
 - d. any claim of Intellectual Property Rights infringement.
 - e. False, misleading or deceptive Advertising Material.
 - f. breach of applicable laws.
- 8.2. Neither Party shall be liable for any special, indirect or consequential loss or damage, loss of profits, business, revenue to the other Party, due to any reason whatsoever. The overall aggregate liability of Brainbees for any direct damages suffered by the User(s) for reason solely attributable to Brainbees shall be limited to the actual damages suffered by User(s) or to the amount paid by the User(s) to Brainbees under this Terms and Conditions against which such liability has arisen, whichever is less.

9. TERMINATION

- 9.1. Either Party shall have the right to terminate this Terms and Conditions, without citing any reason and any liability whatsoever, by giving a 30 (thirty) days prior written notice to the other Party.
- 9.2. In the following instances, either Party may terminate this Terms and Conditions immediately with or without a prior written notice to the other Party if the other Party has not remedied the breach within seven (7) days of notice in writing requiring that such breach be remedied:
- i. A material breach of any of its representation, warranties and obligations under this Terms and Conditions;
 - ii. The Party becomes bankrupt or insolvent.
- 9.3. Brainbees may immediately terminate this Terms and Conditions, if the User(s) fails to pay Brainbees any valid tax invoice under said terms and conditions within the period within which it became due and payable.
- 9.4. **Effects of Termination:** Upon the expiry or early termination of this Terms and Conditions, the Parties hereby agree and acknowledge that the following consequences shall follow:
- The Parties shall refrain from showing any form of association with each other for the matter hereof;
 - The Parties shall cease to use and return any/all Intellectual Property Rights, Confidential Information (if any) of the other Party;
 - Notwithstanding anything contained in this Terms and Conditions, Brainbees shall have no obligation to serve any advertisements on its Platform on and after the expiry of the Term and on and after the termination.
 - In case of advance payment made by the User(s), Brainbees shall not be liable to make any refund in any circumstances whatsoever.

10. FORCE MAJEURE

- 10.1. Force Majeure shall mean any event beyond the control of the affected Party, which could not be anticipated upon formation of this Terms and Conditions, and the effects of which are compelling and unforeseeable. A Force Majeure event makes it temporarily or permanently impossible to perform all or any part of a Party's obligations. In particular, "**Force Majeure Event**" would include fire, earthquake, flood, hacking, epidemic, strike, lockout, labor controversy, riot, civil disturbance, war, civil commotion, terrorism, acts of God, omissions or acts of public authorities preventing or delaying performance of obligation relating to acts of public authorities, including changes in law, regulations or policies of the Government Instrumentalities, or other regulatory authority acts which are beyond the control of any Party causing a prejudice to the Parties under this Terms and Conditions.
- 10.2. Neither Party shall be liable for any delay in, or failure of, performance of any of its obligations under this Terms and Conditions if and to the extent such delay or failure is attributable to Force Majeure or such period of time as the effect of such Force Majeure event continues.

11. DISPUTE RESOLUTION

- 11.1. If any dispute arises between the Parties hereto, during the subsistence or after the Term of the Terms and Conditions, in connection with this Terms and Conditions, including any disputes regarding its validity, interpretation, existence, breach or termination, the Parties hereto shall endeavour to settle such disputes amicably. If the dispute is not resolved through such discussions within thirty (30) days of commencement of discussions to amicably resolve the matter, either Party can refer the dispute to arbitration which shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- 11.2. The seat and place of Arbitration shall be Pune, India and the language of arbitration proceedings shall be in English. The tribunal shall consist of a single arbitrator, if both the Parties agree to the name of single arbitrator. In case of dispute in appointing single arbitrator, both the Parties shall appoint one arbitrator each and that such arbitrators shall appoint third arbitrator. The decision taken by majority of the arbitrators shall be binding on both the Parties.
- 11.3. Any award (interim or final) rendered by the arbitration tribunal shall be final and binding on the parties.
- 11.4. Subject to the arbitration clause above, each Party hereby submits to the exclusive jurisdiction of the courts in Pune, India.

12. MISCELLANEOUS

- 12.1. This Terms and Conditions along with the Annexures shall constitute the entire Terms and Conditions between the Parties hereto relating to the subject matter thereof, and there are no oral statements, representations, warranties, undertakings or Terms and Conditions between the Parties except as provided herein.
- 12.2. **Waiver:** The failure of any Party to enforce any term or provision hereof shall not be construed to be a waiver of such term or provision and shall in no way affect the right of such Party thereafter to enforce such term or provision or any term or provision hereof.
- 12.3. **Amendments:** No modification, amendment or waiver of the terms and conditions of this Terms and Conditions shall be valid or binding unless made in writing and duly executed by the Parties.
- 12.4. **Principal-To-Principal:** This Terms and Conditions has been entered into on a principal-to-principal basis and nothing contained in this Terms and Conditions shall be deemed to constitute a joint venture, partnership, or agency relationship between the Parties. The Parties hereto shall not represent as an agent of the other under any circumstances and at any place and at any point of time and shall fulfil their obligations strictly in terms of this Terms and Conditions as between two independent principals in commercial transactions and none of the terms and conditions of this Terms and Conditions or their context shall be read or meant to be otherwise.

12.5. Assignment: Either Party shall not, in any manner whatsoever, transfer or otherwise assign this Terms and Conditions or any of its rights or obligations hereunder without the prior written intimation to the other Party.

12.6. Notices: Any notice, request, demand, approval, consent or other communication permitted or required to be given under this Terms and Conditions shall be effective only if in writing and delivered (i) personally, or (ii) by registered or certified mail or (iii) by courier, or (iv) by telecopier or other electronic communication, transmission confirmed and addressed to the person indicated below (or such other address or to such other person as the concerned Party may subsequently designate for this purpose).

12.7. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ALL SERVICES PROVIDED BY BRAINBEES IS “AS IS” AND BRAINBEES HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING ADIQUITY’S SERVICES OR ANY PORTION THEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. USER(S)’S USE OF THE SERVICES IS AT ITS OWN OPTION AND RISK.

USER(S) DO NOT WARRANT THAT ANY PUBLISHER PROPERTY, THE AD TOOLE, OR ANY TECHNOLOGY, TOOLS, SERVICES, SOFTWARE, FUNCTIONALITY, MATERIALS, OR INFORMATION PROVIDED IN CONNECTION WITH THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR BE AVAILABLE, UNINTERRUPTED, DEFECT FREE, OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS IN PARTICULAR, USER(S) ACKNOWLEDGES THAT BRAINBEES DOES NOT REVIEW CONTENT OR INFORMATION PROVIDED BY USERS OF THE PLATFORM AND THAT BRAINBEES GIVES NO WARRANTY OR UNDERTAKING IN RELATION TO THE DISPLAY OF ANY SUCH CONTENT OR INFORMATION, INCLUDING IN RELATION TO ANY SEARCH RESULTS DISPLAYED ON THE PLATFORM.

12.8. Severability: Each Party acknowledges that the provisions of this Terms and Conditions are reasonable and waives any defense to the strict enforcement thereof by the other Party. If any provision of this Terms and Conditions is held by a court of competent jurisdiction to be void, invalid, unenforceable or illegal, the remaining provisions shall remain in full force and effect.

12.9. Survival: The following sections shall survive the termination and/or expiration of this Terms and Conditions: Indemnity, Intellectual Property Rights, Confidentiality, Dispute Resolution, and all subparts of this Clause 12.

ANNEXURE A

Scope of Work, Pricing and Other Terms and Conditions:

1. Scope of Work

- a. The User(s) will get to advertise through the tools available on the Brand Login account of FirstCry Adbees on making advance payment to Brainbees. User shall coordinate and consult with the SPOC appointed by Brainbees who shall assist User in managing the targets and run ads for the User's brand on the Platform.
- b. User(s) hereby appoints and engages Brainbees for carrying out the Services, which shall be mutually agreed between the Parties.
- c. Brainbees shall ensure that the Services to be performed and executed under this Terms and Conditions shall be in accordance with the terms and conditions.
- d. User(s) shall make advance payment before services are rendered by Brainbees under these terms and conditions and such advance payment shall remain non-refundable in all circumstances whatsoever including termination of Services under these terms and conditions.
- e. Any Marketing Incentives if at all, that may be made available from time to time to the brand, shall be as mutually agreed between Brainbees and the User.
- f. Any Marketing Incentives if at all, that may be credited to a brand as part of their wallet balance for the purpose of running campaigns on Brainbees may only be utilised after wallet balance paid for by the brand/User has been exhausted.

2. Pricing and Payment Terms:

The User(s) shall pay Brainbees Marketing amount + GST before starting campaign i.e. advance payment before services are rendered by Brainbees. Brainbees shall not make any refund once the payment is received from the User(s).

Brainbees shall submit to the User(s) a tax invoice basis the advance payment made by the brand detailing the Services, fees and tax component, in accordance with Annexure A and Applicable Laws.

3. Prohibited Content

This section includes content that must not be featured on any Content. The User(s) agrees that below list is not exhaustive and can be amended by Brainbees with intimation duly served to the User(s).

- Children in adult or dangerous situations. For example, ads must not show children close to, or handling, firearms or other weapons, or in situations which may contravene established child safety best practices (such as children in vehicles without their seatbelts fastened or cycling without helmets), or without adult supervision in places or situations where they cannot safely look after themselves (such as swimming pools, crossing busy roads or around dangerous equipment).
- Deceptive, false, or misleading content.

- Directly targeted at or that appeal to children due to the messaging, imagery, or targeting.
- Emotionally draining or exploitative, including content that portrays abused humans or animals.
- Content that promotes practices that can result in the physical or mental harm of customers.
- That encourages, glamorizes or depicts excessive consumption of drugs or alcohol.
- Excessive violence or gore. For example, exposed guts or dismemberment.
- Exploitation of sensitive events such as natural disasters, human-caused disasters, incidents of mass trauma and/or casualties, or the death of public figures.
- Full nudity, which Brainbees defines as fully visible intimate body parts: genitals, female breasts (not including breastfeeding), and buttocks.
- Obscene, controversial, defamatory, libelous, illegal, or invasive of another's privacy.
- Political, such as campaigns for or against a politician or a political party, or related to an election, or content related to political issues of public debate. During an election year we prohibit media products about a specific political party, issue, or candidate.
- Content that revolves around highly debated social topics.
- Pornography or explicit sexual content.
- Foul, vulgar, or obscene language or language containing profanity, including obscured profanity, graphic or suggestive language or double entendres, or scatological references.
- Religious advocacy, either advocating or demeaning any religion.
- Threatening, abusive, intolerant, or harassing, or content that advocates or discriminates against a protected group (whether based on race, color, national origin, religion, disability, sex, sexual orientation, disability, age or any similar or another category).