



# MyBrandForce Terms of Use

Effective date: 20-Sep-2023

These Terms of Use (“Terms of Use”) constitute a legally binding agreement between you and MyBrandForce, Inc. and its subsidiaries, representatives, affiliates, officers, and directors (collectively, “MyBrandForce”) governing your use of the MyBrandForce personalized, multipurpose, digital content and platform (“MyBrandForce Platform”) and any related content or services, including mobile and/or web-based applications (“Applications” or the “MyBrandForce App,”) and together with MyBrandForce digital services platform (“Services”).

**IMPORTANT:** Please be advised that these Terms of Use contain provisions that govern how you can bring claims between you and MyBrandForce, including the arbitration agreement in Section 2 below. These Terms of Use outline how such claims are resolved, including, without limitation, any claims that arose or were asserted before the effective date of these Terms of Use. Please review the arbitration agreement in Section 2 carefully, as it requires you to resolve all disputes with MyBrandForce on an individual basis and, with limited exceptions, through final and binding arbitration, you are waiving your right to seek relief in a court of law and to have a jury trial on your claims. By agreeing to these Terms of Use, you expressly acknowledge that you have read and understood all these Terms of Use and have taken time to consider the consequences of this important decision.

## 1. Contractual Relationship; Termination; and Modification

In addition to these Terms of Use, your access to, and use of the Services is also governed by the applicable terms found on our website, including without limitation, the Privacy Notice, which describes how we collect, use, and disclose your personal information; and MyBrandForce’s other applicable MyBrandForce standards and policies which we refer to collectively as the “Supplemental Terms.”

Collectively, we refer to these Terms of Use and the Supplemental Terms as the “Terms.” These Terms govern your access or use, from within the United States and its territories and possessions, of the Services made available in the United States and its territories and possessions (the “Territory”). If you use the Services in another country, you agree to be subject to MyBrandForce’s Terms of Use for that country. **PLEASE READ THESE TERMS CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND MYBRANDFORCE.** In these Terms, the words “including” and “include” mean “including, but not limited to.”

By accessing or using the Services, you confirm your agreement to be bound by these Terms. If you do not agree to these Terms, do not access or use the Services. These Terms expressly govern the use of the Services in the Territory.

### Termination.

MyBrandForce, in its sole discretion, may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

### Modification.

MyBrandForce reserves the right to modify these Terms or its policies relating to the Services at any time, effective upon posting of an updated version of these Terms through the Services or MyBrandForce's website. You should regularly review these Terms, as your continued use of the Services after any such changes constitutes your agreement to such changes.

## 2. Arbitration Agreement

By agreeing to these Terms, you agree that you are required to resolve any claim that you may have against MyBrandForce on an individual basis in arbitration as set forth in this Arbitration Agreement, and not as a class, collective, coordinated, consolidated, mass and/or representative action. You and MyBrandForce are each waiving your right to a trial by jury. This Arbitration Agreement will preclude you from bringing any class, collective, coordinated, consolidated, mass and/or representative action against MyBrandForce, and preclude you from participating in or recovering relief in any current or future class, collective, coordinated, consolidated, mass and/or representative action brought against MyBrandForce by someone else—except as provided below in Section 2(a)(3)(c). Thus, the parties agree that the Arbitrator shall not conduct any form of class, collective, coordinated, consolidated, mass and/or representative arbitration, nor join, coordinate, or consolidate claims of multiple individuals against MyBrandForce in a single proceeding—except as provided below in Section 2(a)(3)(c). For the avoidance of doubt, except as provided below in Section 2(a)(3)(c), this Arbitration Agreement precludes you from bringing or participating in any kind of class, collective, coordinated, consolidated, mass and/or representative or other kind of group, multi-plaintiff, or joint action against MyBrandForce, other than participating in a class-wide, collective, coordinated, consolidated, mass and/or representative settlement of claims.

### (a) Agreement to Binding Arbitration Between You and MyBrandForce.

**(1) Covered Disputes:** Except as expressly provided below in Exceptions to Arbitration., you and MyBrandForce agree that any dispute, claim, or controversy in any way arising out of or relating to (i) these Terms and prior versions of these Terms, or the existence, breach, termination, enforcement, interpretation, scope, waiver, or validity thereof; (ii) your access to or use of the Services at any time; (iii) incidents or accidents resulting in personal injury to you or anyone else that you allege occurred in connection with your use of the Services (including, but not limited to, your use of the MyBrandForce Marketplace Platform or the brand agent version of the MyBrandForce App), regardless whether the dispute, claim, or controversy occurred or accrued before or after the date you agreed to these Terms, and regardless whether you allege that the personal injury was experienced by you or anyone else; and (iv) your relationship with

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MyBrandForce, will be settled by binding individual arbitration between you and MyBrandForce, and not in a court of law. This Arbitration Agreement survives after your relationship with MyBrandForce ends.

**(2) Class Action Waiver:** All disputes, claims, or controversies between the parties shall be resolved only in individual arbitration. The parties expressly waive the right to have any dispute, claim, or controversy brought, heard, administered, resolved, or arbitrated as a class, collective, coordinated, consolidated, and/or representative action, and neither an arbitrator nor an arbitration provider shall have any authority to hear, arbitrate, or administer any class, collective, coordinated, consolidated, and/or representative action, or to award relief to anyone but the individual in arbitration. The parties also expressly waive the right to seek, recover, or obtain any non-individual relief. Notwithstanding anything else in this agreement, this Class Action Waiver does not prevent you or MyBrandForce from participating in a class-wide, collective, and/or representative settlement of claims.

The parties further agree that if for any reason a claim does not proceed in arbitration, this Class Action Waiver shall remain in effect, and a court may not preside over any action joining, coordinating, or consolidating the claims of multiple individuals against MyBrandForce in a single proceeding, except that this Class Action Waiver shall not prevent you or MyBrandForce from participating in a class-wide, collective, and/or representative settlement of claims. If there is a final judicial determination that any portion of this Class Action Waiver is unenforceable or unlawful for any reason, (i) any class, collective, coordinated, consolidated, and/or representative claims subject to the unenforceable or unlawful portion(s) shall proceed in a court of competent jurisdiction; (ii) the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration; (iii) the unenforceable or unlawful portion(s) shall be severed from this Arbitration Agreement; and (iv) severance of the unenforceable or unlawful portion(s) shall have no impact whatsoever on the enforceability, applicability, or validity of the Arbitration Agreement or the arbitrability of any remaining claims asserted by you or MyBrandForce.

**(3) Mass Actions:**

- a) **Mass Action Waiver:** All disputes, claims, or controversies between the parties shall be resolved only in individual arbitration. The parties expressly waive the right to have any dispute, claim, or controversy brought, heard, administered, resolved, or arbitrated as a mass action, and neither an arbitrator nor an arbitration provider shall have any authority to hear, arbitrate, or administer any mass action or to award relief to anyone but the individual in arbitration—except as provided below in Section 2(a)(3)(c). The parties also expressly waive the right to seek, recover, or obtain any non-individual relief. The parties agree that the definition of a “Mass Action” includes, but is not limited to, instances in which you or MyBrandForce are represented by a law firm or collection of law firms that has filed 50 or more arbitration demands of a substantially similar nature against the other party within 180 days of the arbitration demand filed on your or MyBrandForce’s behalf, and the law firm or collection of law firms seeks to simultaneously or collectively administer and/or arbitrate all the arbitration demands in the aggregate. Notwithstanding anything else in this agreement, this Mass Action Waiver does not prevent you or MyBrandForce from participating in a mass settlement of claims.
- b) **Dispute Procedure:** Notwithstanding any provision to the contrary in the applicable arbitration provider’s rules, the arbitrator shall be empowered to determine whether the party bringing any claim has filed a Mass Action in violation of the Mass Action Waiver. Either party shall raise with the arbitrator or arbitration provider such a dispute within 15 days of its arising. If such a dispute arises before an arbitrator has been appointed, the

parties agree that (i) a panel of three arbitrators shall be appointed to resolve only disputes concerning whether the party bringing any claim has filed a Mass Action in violation of the Mass Action Waiver. Each party shall select one arbitrator from the arbitration provider's roster to serve as a neutral arbitrator, and these arbitrators shall appoint a third neutral arbitrator. If the parties' arbitrators cannot agree on a third arbitrator, the arbitration provider will select the third arbitrator; (ii) MyBrandForce shall pay any administrative fees or costs incidental to the appointment of Arbitrators under this provision, as well as any fees or costs that would not be incurred in a court proceeding, such as payment of the fees of the arbitrators, as well as room rental; (iii) the arbitrators shall issue a written decision with findings of fact and conclusions of law; and (iv) any further arbitration proceedings or assessment of arbitration-related fees shall be stayed pending the arbitrators' resolution of the parties' dispute. If the arbitrator or panel of arbitrators determines that you have violated the Mass Action Waiver, the parties shall have the opportunity to opt out of arbitration within 30 days of the arbitrator's or panel of arbitrator's decision. You may opt out of arbitration by providing written notice of your intention to opt out to the arbitration provider and to MyBrandForce, Inc., Attn: Legal Department, 2050 S. Cottonwood Drive, Tempe AZ 85282 via USPS Priority Mail or hand delivery. This written notice must be signed by you, and not any attorney, agent, or other representative of yours. MyBrandForce may opt out of arbitration by sending written notice of its intention to opt out to the arbitration provider and to you or your attorney, agent, or representative if you are represented. For the avoidance of doubt, the ability to opt out of arbitration described in this Section 2(a)(3)(b) only applies if the arbitrator or panel of arbitrators determines that you have violated the Mass Action Waiver. If the parties proceed with arbitration, the parties agree that arbitrations will be batched as provided in Section 2(a)(3)(c) below.

c) Batching:

i. To increase efficiency of resolution in the event a Mass Action is filed and neither party exercises its right to opt out of arbitration pursuant to Section 2(a)(3)(b) above, the following procedure shall apply. At the request of either party, an arbitrator shall be selected according to the applicable arbitration provider's rules to act as a special master ("Special Master") to resolve threshold disputes regarding the propriety of some or all the arbitration demands submitted in the Mass Action ("Mass Arbitration Demands"). These threshold disputes may include, but are not limited to:

1. Any dispute regarding filing fees owed with respect to the Mass Arbitration Demands, including whether claimants have submitted valid fee waivers.
2. Any dispute regarding whether the applicable arbitration provider has complied with the Arbitration Agreement with respect to processing and administering the Mass Arbitration Demands.
3. Any dispute regarding whether the Mass Arbitration Demands meet the requirements set forth in Section 2(d) below.
4. Whether claimants are barred from proceeding with their claims based on a prior settlement agreement, violation of these Terms, or expiration of the statute of limitations.
5. Any dispute relating to representation of the same claimant by multiple law firms.
6. Any dispute regarding whether the Mass Arbitration Demands were filed with the correct arbitration provider.
7. Any dispute regarding discovery common to all claims; and
8. Any disputes regarding legal or factual issues common to all claims.

Any such request shall be made within 15 days following the expiration of the opt-out period described below and may be made by providing written notice to the arbitration provider. Upon the request of either party to appoint a Special Master to resolve the

foregoing issues, the applicable arbitration provider shall refrain from further processing any of the Mass Arbitration Demands to which a dispute has been raised. No further payment for filing fees, administrative costs, or arbitrator fees shall be deemed due with respect to any of the Mass Arbitration Demands as to which a dispute has been raised until after the dispute(s) has/have been resolved by the Special Master. MyBrandForce shall be responsible for the applicable arbitration provider's and Special Master's fees and costs related to the proceedings before the Special Master.

A Special Master appointed pursuant to this procedure shall have no authority to consolidate cases.

- ii. After proceedings before the Special Master have concluded, to the extent any of the Mass Arbitration Demands are permitted to proceed, the parties shall group the Mass Arbitration Demands into batches of no more than 100 demands per batch by state of residence, and then alphabetically by last name (plus, to the extent there are less than 100 arbitration demands left over after the batching described above, a final batch consisting of the remaining demands), and shall inform the arbitration provider of the batches and their compositions within 14 days of the conclusion of proceedings before the Special Master. The arbitration provider shall treat each batch of claims as one case, with each case having one demand for arbitration, one appointed arbitrator, and one set of administrative documents and administrative and filing fees per batch. The parties shall randomly assign sequential numbers to each batch, and only one batch shall proceed to arbitration at a time in the order of the random sequential numbers. A separate arbitrator will be appointed to, and administrative and filing fees assessed for, each batch as the batch proceeds to arbitration. You agree to cooperate in good faith with MyBrandForce and the arbitration provider to implement such a batch approach to resolution and fees. Nothing in this provision shall be construed as limiting the right to object that the filing or presentation of multiple arbitration demands by or with the assistance of the same law firm or organization violates any term of this Agreement.
- iii. If any Mass Arbitration Demands were originally processed as individual arbitration demands before this batching procedure was commenced, further proceedings, including the assessment of further arbitration filing or administration fees to either party shall be governed by the procedures set forth in this Section 2(a)(3).

**(4) Delegation Clause:** Only an arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement, including without limitation any claim that all or any part of this Arbitration Agreement is void or voidable. An arbitrator shall also have exclusive authority to resolve all threshold arbitrability issues, including issues relating to whether these Terms are applicable, unconscionable, or illusory and any defense to arbitration, including without limitation waiver, delay, laches, or estoppel. However, only a court of competent jurisdiction, and not an arbitrator, shall have the exclusive authority to resolve any and all disputes arising out of or relating to the Class Action Waiver and Mass Action Waiver, including, but not limited to, any claim that all or part of the Class Action Waiver and/or Mass Action Waiver is unenforceable, unconscionable, illegal, void, or voidable—except that, as stated and pursuant to the procedures provided in Section 2(a)(3)(b), an arbitrator or panel of arbitrators shall have authority to determine whether the party bringing any claim has violated the Mass Action Waiver.

(5) **Application to Third Parties:** This Arbitration Agreement shall be binding upon and shall include any claims brought by or against any third parties, including but not limited to your spouses, heirs, third-party beneficiaries, and assigns, where their underlying claims arise out of or relate to your use of the Services. To the extent that any third-party beneficiary to this agreement brings claims against the Parties, those claims shall also be subject to this Arbitration Agreement.

#### (b) **Exceptions to Arbitration.**

Notwithstanding the foregoing, this Arbitration Agreement shall not require arbitration of the following claims: (i) individual claims brought in small claims court so long as the matter remains in such court and advances only on an individual basis; (ii) individual claims of sexual assault or sexual harassment occurring in connection with your use of the Services; and/or (iii) injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.

Such claims may be brought and litigated in a court of competent jurisdiction by you on an individual basis only. On an individual basis means that you cannot bring such claims as a class, collective, coordinated, consolidated, mass and/or representative action against MyBrandForce. For the avoidance of doubt, this precludes you from bringing claims as or participating in any kind of any class, collective, coordinated, consolidated, mass and/or representative or other kind of group, multi-plaintiff, or joint action against MyBrandForce and no action brought by you may be consolidated or joined in any fashion with any other proceeding. Where your claims are brought and litigated to completion on such an individual basis in a court of competent jurisdiction, MyBrandForce agrees to honor your election.

The parties' agreement not to require arbitration in these limited instances does not waive the enforceability of this Arbitration Agreement as to any other provision (including, but not limited to, the waivers provided for in Section 2(a), which will continue to apply in court as well as in arbitration), or the enforceability of this Arbitration Agreement as to any other controversy, claim, or dispute.

#### **Rules and Governing Law.**

For disputes arising in California, the arbitration will be administered by ADR Services, Inc. ("ADR") in accordance with ADR's Arbitration Rules (the "ADR Rules") in effect at the time that the claim is brought, unless the parties agree otherwise in writing. The ADR Rules are available at [www.adrservices.com](http://www.adrservices.com) or by searching for "ADR Arbitration Rules" using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com). The arbitration shall be heard by one arbitrator (the "Arbitrator") selected in accordance with the ADR Rules.

For disputes arising outside of California (or for disputes arising in California only if ADR cannot or will not administer the arbitration), the parties shall be required to meet and confer to select a neutral arbitration provider. Such an arbitration provider shall have operations in the state in which the dispute arises. If the parties are unable to mutually agree upon an arbitration provider, then either party may invoke 9 U.S.C. § 5 to request that a court of competent jurisdiction appoint an arbitration provider with operations in the state in which the dispute arises. Any arbitration provider appointed by a court under 9 U.S.C. § 5 shall conduct arbitration solely on



an individualized basis as set forth in this Section 2. Once the parties mutually agree upon a neutral arbitration provider, or an arbitrator provider is appointed under 9 U.S.C. § 5, the ensuing arbitration shall commence pursuant to the rules of the designated arbitration provider, except as designated herein. Once an arbitration provider is agreed upon or appointed, an Arbitrator shall be appointed. The Arbitrator will be either (1) a retired judge or (2) an attorney licensed to practice law in the state where the arbitration is conducted with experience in the law underlying the dispute. The Arbitrator will be selected by the parties from the applicable arbitration provider's roster of arbitrators. If the parties are unable to agree upon an Arbitrator after a good faith meet and confer effort, then the applicable arbitration provider will appoint the Arbitrator in accordance with its rules.

Notwithstanding any choice of law or other provision in these Terms, the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties to be bound by the provisions of the FAA for all purposes, including, but not limited to, interpretation, implementation, enforcement, and administration of this Arbitration Agreement, and that the FAA and the applicable arbitration provider's rules shall preempt all state laws to the fullest extent permitted by law. All statutes of limitations that would otherwise be applicable will apply to any arbitration proceeding. If the FAA and applicable arbitration provider's rules are found to not apply to any issue regarding the interpretation or enforcement of this Arbitration Agreement, then that issue shall be resolved under the laws of the state where you reside when you accept these Terms.

Any dispute, claim, or controversy arising out of or relating to incidents or accidents resulting in personal injury (including but not limited to sexual assault or harassment claims) that you allege occurred in connection with your use of the Services, whether before or after the date you agreed to the Terms, shall be governed by and construed in accordance with the laws of the state in which the incident or accident occurred.

## Process.

**Pre-Arbitration Dispute Resolution and Notification.** The parties agree that good-faith informal efforts to resolve disputes often can result in a prompt, low-cost, and mutually beneficial outcome. The parties therefore agree that, before either party demands arbitration against the other, we will personally meet and confer, via telephone or videoconference, in a good-faith effort to resolve informally any claim covered by this Arbitration Agreement. Multiple individuals initiating claims cannot participate in the same informal telephonic dispute resolution conference. If you are represented by counsel, your counsel may participate in the conference, but you shall also fully participate in the conference. The party initiating the claim must give notice to the other party in writing of their intent to initiate an informal dispute resolution conference, which shall occur within 60 days after the other party receives such notice, unless an extension is mutually agreed upon by the parties. To notify MyBrandForce that you intend to initiate an informal dispute resolution conference, write to MyBrandForce Inc., Attn: Legal Department, 2050 S. Cottonwood Drive, Tempe AZ 85282, providing your name, the telephone number(s) associated with your MyBrandForce account (if any), the email address(es) associated with your MyBrandForce account, and a description of your claim. Engaging in an informal dispute resolution conference is a condition precedent that must be fulfilled before commencing arbitration, and the Arbitrator shall dismiss any arbitration demand filed before

completion of an informal dispute resolution conference. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution process required by this paragraph.

**Initiating Arbitration.** To initiate arbitration following the conclusion of the informal dispute resolution process required by this Section, a party must provide the other party with a written demand for arbitration and file the demand with the applicable arbitration provider, as determined by Section 2(c). A party initiating an arbitration against MyBrandForce must send the written demand for arbitration to MyBrandForce Technologies, Inc., LLC, Attn: Legal Department, 2050 S. Cottonwood Drive, Tempe AZ 85282 or serve the Demand on MyBrandForce's registered agent for service of process, c/o MyBrandForce Technologies, Inc. (the name and current contact information for the registered agent in each state are available online here). Additionally, a party initiating arbitration against MyBrandForce must send an electronic version of the demand for arbitration to the Arbitration Provider and must send an electronic version of the as-filed demand to [filed-arbitration-demands@MyBrandForce.com](mailto:filed-arbitration-demands@MyBrandForce.com). By signing the demand for arbitration, counsel certifies to the best of counsel's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that (i) the demand for arbitration is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (ii) the claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (iii) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Arbitrator shall be authorized to afford any relief or impose any sanctions available under Federal Rule of Civil Procedure 11 or any applicable state law for either party's violation of this requirement.

### Location.

Unless you and MyBrandForce otherwise agree, if you reside in the United States, the arbitration will be conducted in the county where you reside. If you do not reside in the United States, the arbitration will be conducted in the county where the dispute arises. Your right to a hearing will be determined by the applicable arbitration provider's rules. Subject to the applicable arbitration provider's rules, the Arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

### Offers of Judgment.

At least 10 days before the date set for the arbitration hearing, any party may serve an offer in writing upon the other party to allow judgment on specified terms. If the offer is accepted, the offer with proof of acceptance shall be submitted to the arbitrator, who shall enter judgment accordingly. If the offer is not accepted prior to the arbitration hearing or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the arbitration. If an offer made by one party is not accepted by the other party, and the other party fails to obtain a more favorable award, the other party shall not recover their post-offer costs and shall pay the offering party's costs from the time of the offer.

### Arbitrator's Decision.



The Arbitrator will render an award within the time frame specified in the applicable arbitration provider's rules. Judgment on the arbitration award may be entered in any court of competent jurisdiction. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties.

The Arbitrator is not bound by decisions reached in separate arbitrations, and the Arbitrator's decision shall be binding only upon the parties to the arbitration that are the subject of the decision.

The Arbitrator shall award reasonable costs incurred in the arbitration to the prevailing party in accordance with the law(s) of the state in which arbitration is held.

### Fees.

Except for the provisions governing payment of arbitration costs set forth above, your responsibility to pay any filing, administrative, and arbitrator fees will be solely as set forth in the applicable arbitration provider's rules and shall be up to the amount you would be required to pay if you filed a claim in court.

If you have a gross monthly income of less than 300% of the federal poverty guidelines, you are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. If you believe that you meet the requirements to obtain a fee waiver, and your demand for arbitration arises outside of California, then you may request a fee waiver only by submitting to the arbitration provider AO 240, Application to Proceed in District Court Without Prepaying Fees or Costs (found here), or a declaration under oath containing all the information required by AO 240; if your demand for arbitration arises in California, then you must submit a declaration under oath providing your monthly income and the number of persons in your household.

All disputes regarding a party's obligation to pay any arbitration fees or costs that arise after an arbitrator is appointed shall be determined solely by the arbitrator. If such a dispute arises before an arbitrator has been appointed, and if no Special Master has been requested by either party pursuant to Section 2(a)(3)(c)(i) of these Terms, the parties agree that (i) the due date for any disputed fees shall be stayed pending resolution of the parties' dispute, (ii) a panel of three arbitrators shall be appointed to resolve the parties' dispute concerning a party's obligation to pay fees or costs of arbitration, (iii) the panel of arbitrators shall be appointed by each party selecting one arbitrator from the arbitration provider's roster to serve as neutral arbitrators, and these arbitrators shall appoint a third neutral arbitrator. If the parties' arbitrators cannot agree on a third arbitrator, the arbitration administrator will select the third arbitrator, (iv) MyBrandForce shall pay any administrative fees or costs incidental to the appointment of a panel of arbitrators under this provision, as well as any fees or costs that would not be incurred in a court proceeding, such as payment of the fees of the arbitrator(s), as well as room rental, and (v) the arbitrator(s) shall issue a written decision with findings of fact and conclusions of law. If two or more fee disputes between a claimant and MyBrandForce arise at or around the same time, the disputes may be consolidated for resolution by a single arbitrator or panel of arbitrators either at the agreement of the parties or the election of the party common to all such disputes.

### Severability and Survival.

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (i) the unenforceable or unlawful provision shall be severed from these Terms; (ii) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (iii) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

### 3. The Services

As a MyBrandForce Brand Agent, the Services allow you to execute retail assignments as an independent contractor ("third party provider"), capturing and transmitting real-time observational data using MyBrandForce's mobile app and technology platform on your personal mobile device. The Services also enable you to complete supporting services such as on-demand training and payment processing.

As a Customer, the Services allow you to request and receive scalable field services and acquire real-time observational data from third party providers cross the country. Customers can monitor field services activity, escalate live issues, and leverage productivity tools for up-to-the-minute insights.

#### Ownership; License; and Restrictions.

MyBrandForce, Inc or a subsidiary or affiliate ("MyBrandForce") is providing you access to its software, software as a service, or services (collectively, the "services") subject to the terms of an executed Master Services Agreement or License Agreement between you or your company (the "Agreement"). The Agreement governs the use of the Services. By downloading, installing, or using the services, you acknowledge and agree that you are familiar with, understand, and agree to be bound by the terms of the Agreement.

The Services and all rights, title, and interest, including all related intellectual property rights therein are and shall remain MyBrandForce's property or the property of MyBrandForce's licensors. These Terms are not a sale and do not convey or grant to you any rights in or related to the Services, or any intellectual property rights owned by MyBrandForce, except for the limited license granted above.

Subject to your compliance with these Terms, MyBrandForce grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to:

- access and use the MyBrandForce App solely in connection with your use of the Services on your personal device; and
- access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal, noncommercial use.

Any rights not expressly granted herein are reserved by MyBrandForce and MyBrandForce's licensors.

You agree that you will not use MyBrandForce's copyrights, trademarks, service marks, or trade dress, aside from use incidental to your use of the Services, without express, written permission from MyBrandForce. This prohibition includes use in domain names, websites, and social media accounts. You may not:

- remove any copyright, trademark, or other proprietary notices from any portion of the Services
- reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by MyBrandForce
- decompile, reverse engineer, or disassemble the Services except as may be permitted by applicable law
- link to, mirror or frame any portion of the Services
- cause or launch any programs or scripts for the purpose of, or which result in, unduly burdening or hindering the operation and/or functionality of any aspect of the Services
- attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

### Third-Party Services and Content.

While many Third-Party Services are available in the MyBrandForce App, certain Third-Party Services or content are only accessible by exiting the MyBrandForce App ("Out-of-App Experiences"). Examples may include third-party services for video interviews, background checking services, or payment processing. Once you click on a link to access Out-of-App Experiences, you will be subject to the terms and conditions and privacy policy of that website, destination, or Out-of-App Experience provider, which are different from MyBrandForce's. MyBrandForce will not warn you that you have left the Services or that you are subject to the terms and conditions (including privacy policies) of another website, destination, or Out-of-App Experience provider. You use all links in third-party websites and advertisements at your own risk as these are not part of the Services and are not controlled by MyBrandForce. MyBrandForce does not endorse such Out-of-App Experience providers and in no event shall MyBrandForce be responsible or liable for any products or services of such third-party providers.

### App Stores.

The availability of the Services may be dependent on the third-party from which you received the license to the MyBrandForce App, e.g., the Apple iPhone or Android app stores ("App Store"). These Terms are between you and MyBrandForce and not with the App Store and MyBrandForce is responsible for the provision of Services as described in these Terms. However, if you downloaded the MyBrandForce App from the Apple App Store, Apple and its subsidiaries are third-party beneficiaries of these Terms. Upon your acceptance of these Terms, Apple shall have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof. These Terms incorporate by reference Apple's Licensed Application End User License Agreement, for purposes of which, you are the "end-user." In the event of a conflict in the terms of the Licensed Application End User License Agreement and these Terms, these Terms will control.

## 4. Accessing the Services

### User Accounts.

To use most aspects of the Services, you must register for and maintain an active personal user Services account (“Account”). You cannot register for or maintain an Account if you have previously been banned from accessing or using the Services. Account registration may require you to submit certain personal information to MyBrandForce, such as your name, address, email address, mobile phone number, and age, as well as at least one valid payment method that you are authorized to use and is supported by MyBrandForce. For more information regarding MyBrandForce’s use of your personal information, please see our Privacy Notice. You agree to maintain accurate, complete, and up-to-date information in your Account, including a valid name, address, phone number, email address, age, and payment method. Except as described below, you must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account, unless a specific Service permits otherwise. Unless otherwise permitted by MyBrandForce in writing, you may only possess one Account and you may not assign or otherwise transfer your Account to any other person or entity. You are responsible for all activity that occurs under your Account, and you agree to always maintain the security and secrecy of your Account credentials.

### Minors.

Except as described below, the Services are generally not available for use by persons under the age of 18. You may not authorize third parties to use your Account, and you may not allow persons under the age of 18 to use the Services. However, we may offer parents and guardians the ability to create Accounts for their children. If you are a parent or legal guardian, and you allow your child to use the Services, then these Terms apply to you, and you are responsible for your child’s activity on the Services. If you are under the age to obtain an Account, you must have your parent or legal guardian’s permission to use an Account and accept any additional terms required in connection with your access and use of the Services as a minor. Please have your parent or legal guardian read these additional terms with you.

### Network Access and Devices.

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network’s data and messaging rates and fees may apply if you access or use the Services from your device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and any updates thereto. MyBrandForce does not guarantee that the Services, or any portion thereof, will function on any hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications. MyBrandForce is not responsible for any delays, delivery failures, or damage, loss or injury resulting from such problems.

## 5. User Conduct and Requirements; Communications; and User Content

### User Conduct and Requirements.

In addition to complying with these Terms, you agree to comply with all applicable laws when accessing or using the Services, and you may only access or use the Services for lawful purposes (e.g., no request for the purpose or intent of inappropriate or unlawful in-store activities). You may not access or use the Services to cause nuisance, annoyance, inconvenience, damage, or loss to MyBrandForce, MyBrandForce' customers, retail staff, any third-party provider or other party.

### Communications with MyBrandForce.

By creating an Account, you electronically agree to accept and receive communications from MyBrandForce, third-party providers or third parties providing services to MyBrandForce including via email, text message, WhatsApp, calls, in-app communications, and push notifications to the telephone number(s) or email addresses you provided to MyBrandForce. You may also receive communications generated by automatic telephone dialing systems and/or which will deliver prerecorded messages sent by or on behalf of MyBrandForce, and/or third-party providers, including but not limited to communications concerning requests placed through your Account on the Services. Message and data rates may apply. You can learn more about how MyBrandForce may contact you by reading our Privacy Notice.

If you do not wish to receive promotional emails, text messages, or other communications from MyBrandForce, you may change your notification preferences by accessing Settings in your Account. To opt out of receiving text messages from MyBrandForce, you must reply "STOP" from the mobile device receiving the messages. For purposes of clarity, text messages between you, MyBrandForce, and third-party providers are transactional text messages, not promotional text messages. You acknowledge that opting out of receiving all communications may impact your use of the Services. Notwithstanding the foregoing, if we suspect fraud or unlawful activity on your Account, MyBrandForce may contact you using any of the contact information you provided in connection with your Account (including via text or voice-recorded message).

### Use of Accounts Owned by Others.

In the event you use a MyBrandForce product or service that enables use of or billing to another person or business, certain information will be shared with that party. This may include information regarding the time and date of services you request, time and date of services that you perform, the location of such services, and associated photos, videos and other data collected for such services. You acknowledge that such data sharing is a condition of use of any such MyBrandForce product or service.

### User Provided Content and Feedback.

Content that you provide to MyBrandForce is governed by MyBrandForce's Generated Content Terms, which are incorporated in these Terms by reference. Feedback that you provide to MyBrandForce is governed by MyBrandForce's Feedback Policy, which are incorporated in these Terms by reference.

## 7. Disclaimers; Limitation of Liability; and Indemnity.

### Disclaimers.

The services are provided “as is” and “as available.” MyBrandForce disclaims all representations and warranties, express, implied, or statutory, not expressly set out in these terms, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, MyBrandForce makes no representation, warranty, or guarantee regarding the reliability, timeliness, quality, suitability, or availability of the services or any services or goods requested using the services, or that the services will be uninterrupted or error-free.

MyBrandForce does not guarantee the quality, suitability, safety, or ability of third-party providers. You agree that the entire risk arising out of your use of the services, and any service or good requested or obtained from third-party providers in connection therewith, remains solely with you, to the maximum extent permitted under applicable law.

MyBrandForce does not control, manage, or direct any third-party providers. Third-party providers are not actual agents, apparent agents, ostensible agents, or employees of MyBrandForce. If a dispute arises between you and or any other third party, you release MyBrandForce from losses of every kind and nature, known and unknown, suspected, and unsuspected, disclosed, and undisclosed, arising out of or in any way connected with such disputes.

MyBrandForce does not control, endorse, or take responsibility for any user content or third-party content available on or linked to by the services. MyBrandForce cannot and does not represent or warrant that the services are free of viruses or other harmful components.

MyBrandForce’s use of algorithms to provide services or improve the experience of users and the security and safety of the services does not constitute a guarantee or warranty of any kind, expressed or implied.

### Limitation of Liability.

MyBrandForce shall not be liable for indirect, incidental, special, exemplary, punitive, or consequential damages, including lost profits, lost data, personal injury, or property damage related to, in connection with, or otherwise resulting from any use of the services, regardless of the negligence (either active, affirmative, sole, or concurrent) of MyBrandForce, even if MyBrandForce has been advised of the possibility of such damages.

MyBrandForce shall not be liable for any damages, liability or losses arising out of: (i) your use of or reliance on the services or your inability to access or use the services; or (ii) any transaction or relationship between you and any third-party provider, even if MyBrandForce has been advised of the possibility of such damages. MyBrandForce shall not be liable for delay or failure in performance resulting from causes beyond MyBrandForce's reasonable control. You acknowledge that third-party providers are not ostensible agents, apparent agents, actual agents, or employees of MyBrandForce.

The services may be used by you to request and schedule site surveys, sampling events, product compliance visits or other field services with third-party providers, but you agree that



MyBrandForce has no responsibility or liability to you related to any field services provided to or not provided to you by third-party providers other than as expressly set forth in these terms.

The limitations and disclaimers in this section do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable law. Because some states or jurisdictions do not allow the exclusion of or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, MyBrandForce's liability shall be limited to the extent permitted by law. This provision shall have no effect on MyBrandForce's choice of law provision set forth below.

### Indemnity.

You agree to indemnify and hold MyBrandForce and its affiliates and their officers, directors, employees, and agents harmless from and against all actions, claims, demands, losses, liabilities, costs, damages, and expenses (including attorneys' fees), arising out of or in connection with:

- your use of the Services or services or goods obtained through your use of the Services
- your breach or violation of any of these Terms
- MyBrandForce's use of your User Content; or
- your violation of the rights of any third party, including Third-Party Providers.

## 8. Other Provisions

### Notice.

MyBrandForce may give notice by means of a general notice on or through the Services, electronic mail to the email address associated with your Account, telephone or text message to any phone number provided in connection with your Account, or by written communication sent by first class mail or pre-paid post to any address connected with your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or at the time of sending (if sent by email, telephone, or on or through the Services). Notwithstanding the foregoing, notice of any modifications to these Terms shall be effective upon posting an updated version of these Terms on MyBrandForce's website or through the Services. You may give notice to MyBrandForce, with such notice deemed given when received by MyBrandForce, at any time by first class mail or pre-paid post to our registered agent for service of process, c/o MyBrandForce, Inc. The name and current contact information for the registered agent in each state are available online at [www.mybrandforce.com](http://www.mybrandforce.com) If another provision of these Terms addresses any specific notice (for example, notice of updates to these Terms, or notice of a dispute or arbitration demand), those specific notice provisions shall prevail to the extent there is any conflict or inconsistency between those provisions and this notice provision.

### Choice of Law.

These Terms shall be governed by and construed in accordance with the laws of the state in which your dispute arises, without regard to the choice or conflict of law principles of any jurisdiction, except as may be otherwise provided in the Arbitration Agreement in Section 2 above or in Supplemental Terms applicable to your region. This Choice of Law provision applies

only to the interpretation of these Terms, and these provisions shall not be interpreted as generally extending any state's law to you if your dispute did not arise in that state. Any dispute, claim, or controversy arising out of or relating to incidents or accidents resulting in personal injury (including but not limited to sexual assault or harassment claims) that you allege occurred in connection with your use of the Services, whether before or after the date you agreed to these Terms, shall be governed by and construed in accordance with the laws of the state in which the incident or accident occurred.

### Choice of Forum.

Any dispute, claim or controversy arising out of or relating to these Terms or the existence, breach, termination, enforcement, interpretation or validity thereof, shall be brought exclusively in the state and federal courts of the state in which the dispute, claim or controversy arose, notwithstanding that other courts may have jurisdiction over the parties and subject matter, except as may be otherwise provided by the Arbitration Agreement above or in Supplemental Terms applicable to your region.

Notwithstanding the foregoing, any dispute, claim, or controversy arising out of or relating to incidents or accidents resulting in personal injury (including but not limited to sexual assault or harassment claims) that you allege occurred in connection with your use of the Services, whether before or after the date you agreed to these Terms, shall be brought exclusively in the state or federal courts in the state in which the incident or accident occurred, notwithstanding that other courts may have jurisdiction over the parties and subject matter, and except as may be otherwise provided in the Arbitration Agreement in Section 2 or in Supplemental Terms applicable to your region, to the extent permitted by law.

The foregoing Choice of Law and Choice of Forum provisions do not apply to the Arbitration Agreement in Section 2, and we refer you to Section 2 for the applicable provisions for such disputes.

### Claims of Copyright and Trademark Infringement.

Claims of copyright and trademark infringement should be sent to MyBrandForce's designated agent. Please see MyBrandForce's Copyright Policy or Trademark Policy for the designated address and additional information.

### General.

You may not assign these Terms without MyBrandForce's prior written approval. MyBrandForce may assign these Terms without your consent to: (i) a subsidiary or affiliate; (ii) an acquirer of MyBrandForce's equity, business, or assets; or (iii) a successor by merger. Any purported assignment by you in violation of this Section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, Uber, any Third-Party Provider, or any Out-of-App Experience Provider as a result of these Terms or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be fully enforced under law. Uber's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by MyBrandForce in writing. This provision shall not affect the Severability and Survivability section of the Arbitration Agreement of these Terms.