

Software-as-a-Service Agreement

This **Software-as-a-Service Agreement** (“**Agreement**”), is effective on the date stated in the associated Order Form (the “**Effective Date**”), is entered into by and between **Brandfolder Inc.**, a Delaware corporation, with offices at 3501 Wazee St., #300, Denver, Colorado 80216 (“**Brandfolder**”) and the entity identified on the associated Order Form (“**Customer**”).

1. Definitions

- “**Affiliate**” means, with respect to a party, any entity which directly or indirectly controls, is controlled by or is under common control with such party, where “control” means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of 50% or more of the voting interests of such party (but only for as long as such entity meets these requirements).
- “**Customer Data**” means any data, content, works, and information provided or delivered by Customer, and/or any User, to Brandfolder through the Brandfolder Services.
- “**Documentation**” means the user manuals provided or made available to Customer by Brandfolder for the Brandfolder Services.
- “**Brandfolder Services**” means the online service identified in an Order Form.
- “**Brandfolder Software**” means Brandfolder’s proprietary software used by Brandfolder to provide the Brandfolder Services.
- “**Intellectual Property Rights**” means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights.
- “**Order Form**” means a Brandfolder order form or similarly titled document that references this Agreement and is executed by both parties that identifies services purchased by Customer, fees to be paid by Customer, and other terms and conditions.
- “**Users**” means Customer’s employees, contractors, and other individuals who are authorized by Customer to use the Brandfolder Services on behalf of Customer and have been supplied user identifications and passwords by Brandfolder for this purpose.

Additional definitions are found in Exhibit A.

2. Access Grant and Other Rights

- Subject to the terms and conditions of this Agreement, Brandfolder grants to Customer during the Term (as defined below) a non-exclusive, non-transferable right to access and use the Brandfolder Services for which Customer has paid the applicable fees, solely for Customer’s internal business purposes, and only in accordance with the Documentation, the user quotas, and other limitations set forth in an associated Order Form.
- **Restrictions On Use.** Customer will not, and will not permit their employees and third party contractors to (a) reproduce, modify, adapt, alter, translate, or create derivative works from the Brandfolder Software or Brandfolder Service; (b) sublicense, lease, rent, loan, sell, distribute, make available, or otherwise transfer the Brandfolder Software or Brandfolder Service to any third party, (c) reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Brandfolder Software or Brandfolder Service; or (d) otherwise use or copy the Brandfolder Software or Brandfolder Service except as expressly allowed under Section 2.1.
- Customer hereby grants to Brandfolder a non-exclusive right and license to use the Customer Data solely for the limited purpose of performing Brandfolder’s obligations hereunder for the benefit of Customer. Brandfolder shall not use the Customer Data for the benefit of any other customer of Brandfolder, or for any other purpose, without Customer’s prior written approval. Subject to the rights granted in this Agreement, Customer retains all right, title and interest in and to the Customer Data, and Brandfolder acknowledges that it neither owns nor acquires any additional rights in and to the Customer Data not expressly granted by this Agreement. Customer represents and warrants that it has the right to use the Customer Data and provide the Customer Data to Brandfolder. Brandfolder may generate Usage Data to operate, improve, analyze, and support the Brandfolder Services and for benchmarking and reporting and for any other lawful business purposes. However, Brandfolder will not disclose Usage Data externally, including in benchmarks or reports, unless it has been (i) de-identified so that it does not individually identify Customer or Users and (ii) aggregated with usage data across other Brandfolder customers. “**Usage Data**” means technical logs, data and learnings about Customer’s use of the Brandfolder Services and marketing assets.
- **Access Credentials.** Each User will be assigned a unique user identification name and password for access to and use of the Brandfolder Service. Customer shall be responsible for ensuring the security and confidentiality of its login credentials. Customer’s access and use of the Brandfolder Service will be limited to the number of Users and types of transactions for which Customer has paid the applicable Fees. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Brandfolder Service, and notify

Brandfolder promptly of any such unauthorized use. Customer will be liable for the acts and omissions of all Users to the extent any of such acts or omissions, if performed by Customer, would constitute a breach of, or otherwise give rise to liability to Customer under, this Agreement.

- **Customer Affiliates.** Customer may grant its Affiliates access to and use of the Brandfolder Services solely so the Affiliates may use Brandfolder Services for the benefit of Customer and not for the Affiliate's own benefit, in all cases, subject to the terms and condition of this Agreement. Customer will remain fully responsible and liable for all acts and omissions of such Affiliates arising from or related to this Agreement, including the Affiliates' access and use of the Brandfolder Services, as if performed by Customer itself. Customer shall notify each Affiliate of the terms and conditions of this Agreement.

3. Support Services

Subject to the terms and conditions of this Agreement, Brandfolder will provide Customer with those support and maintenance services for the Brandfolder Services described in Exhibit A ("**Support Services**").

4. Proprietary Rights

The Brandfolder Services, Usage Data, and Brandfolder Software, and all worldwide Intellectual Property Rights therein, are the exclusive property of Brandfolder and its third-party licensors. All rights in and to the Brandfolder Services and Brandfolder Software not expressly granted to Customer in this Agreement are reserved by Brandfolder and its suppliers. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Brandfolder or its suppliers on the Brandfolder Software or Documentation.

5. Fees and Payment

- Customer will pay Brandfolder the fees set forth in the associated Order Form. All Fees are non-refundable, except as otherwise set out in this Agreement. The annual subscription and support fees for the use of the Brandfolder Services are annual fees that are payable annually in advance. The on boarding fee is a one-time fee that will be billed on the initial invoice. The Fees are subject to revision by Brandfolder on an annual basis based on market conditions and functional changes in the Brandfolder Software and Brandfolder Services that may occur.
- Brandfolder shall invoice Customer in advance. Unless otherwise expressly provided in this Agreement, Customer will pay all Fees no later than 30 days after Customer's receipt of the applicable invoice. Fees exclude all applicable sales, use, and other taxes (excluding any taxes arising from Brandfolder's income or any employment taxes) ("**Taxes**"). Brandfolder will invoice for, collect, and remit applicable Taxes only if required by applicable law. Customer shall make all payments in U.S. dollars.

6. Warranty; Disclaimer

- **Brandfolder Warranty.** Brandfolder warrants that (a) it will perform the Support Services in a professional and competent manner in accordance with industry standards, and (b) the Brandfolder Services will be free of material Errors. As Customer's sole and exclusive remedy and Brandfolder's sole obligation for a breach of the warranty in (a) above, and only if Customer notifies Brandfolder of a breach of the warranty in sub-section (a) above, specifying the breach in reasonable detail, within 30 days after Brandfolder performs the non-conforming Support Services, then Brandfolder will, at its own option and expense re-perform the Support Services which gave rise to the breach. As Customer's sole and exclusive remedy and Brandfolder's sole obligation for a breach of the warranty in (b) above, and only if Customer notifies Brandfolder of a breach of the warranty in sub-section (b) above, specifying the breach in reasonable detail, within 30 days after Customer experiences such Error, Brandfolder will, at its own option and expense: (i) correct or provide a work around for any Error; or (ii) at Brandfolder's option, refund the Fees paid by Customer for the Brandfolder Services for the period during which Customer was not able to use the Brandfolder Services.
- EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. BRANDFOLDER DOES NOT WARRANT THAT CUSTOMER'S USE OF THE BRANDFOLDER SOFTWARE OR BRANDFOLDER SERVICES WILL BE ERROR-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS.

7. Indemnity

- Brandfolder will defend any claim, suit, or action against Customer brought by a third party to the extent based on an allegation that the Brandfolder Software infringes any Intellectual Property Rights of such third party (each, a "**Customer Claim**"), and Brandfolder shall indemnify and hold Customer harmless, from and against damages, losses, liabilities, and expenses (including reasonable attorneys' fees and other legal expenses) (collectively, "**Losses**") that are specifically attributable to such Customer Claim or those costs and damages

agreed to in a settlement of such Customer Claim. The foregoing obligations are conditioned on Customer: (a) promptly notifying Brandfolder in writing of such Customer Claim; (b) giving Brandfolder sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Brandfolder's request and expense, assisting in such defense. In the event that the use of the Brandfolder Software and/or Service is enjoined, Brandfolder shall, at its option and at its own expense either (a) procure for Customer the right to continue using the Brandfolder Services and/or Brandfolder Software, as applicable, (b) replace the Brandfolder Software with a non-infringing but functionally equivalent product, (c) modify the Brandfolder Software so it becomes non-infringing or (d) terminate this Agreement and refund the amounts Customer paid for the Brandfolder Services that relate to the period during which Customer was not able to use the Brandfolder Services. Notwithstanding the foregoing, Brandfolder will have no obligation under this Section 7.1 with respect to any infringement claim based upon: (1) any use of the Brandfolder Software and/or Brandfolder Services not in accordance with this Agreement; (2) any use of the Brandfolder Software and/or Brandfolder Services in combination with products, equipment, software, or data that Brandfolder did not supply or approve of if such infringement would have been avoided without the combination with such other products, equipment, software or data; or (3) any modification of the Brandfolder Software and/or Brandfolder Services by any person other than Brandfolder or its authorized agents or subcontractors. This Section 7.1 states Brandfolder's entire liability and Customer's sole and exclusive remedy for infringement claims or actions.

- Customer shall defend, any claim, suit, or action against Brandfolder brought by a third party to the extent that such claim, suit or action is based upon Customer's or Brandfolder's use of any Customer Data in accordance with this Agreement ("**Brandfolder Claim**") and Customer shall indemnify and hold Service harmless, from and against Losses that are specifically attributable to such Brandfolder Claim or those costs and damages agreed to in a settlement of such Brandfolder Claim. The foregoing obligations are conditioned on Brandfolder: (a) promptly notifying Customer in writing of such Brandfolder Claim; (b) giving Customer sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Customer's request and expense, assisting in such defense. Notwithstanding the foregoing, Customer will have no obligation under this Section 7.2 or otherwise with respect to any Brandfolder Claim to the extent based upon Brandfolder's use of the Customer Data in violation of this Agreement.

8. Limitation of Liability

In no event will EITHER PARTY be liable for any consequential, indirect, EXEmplary, special, or incidental damages, OR FOR any lost data, lost profits OR costs of procurement of substitute goods or services, arising from or relating to this Agreement, however caused and under any theory of liability (including negligence), even if SUCH PARTY has been advised of the possibility of such damages. EACH PARTY's total cumulative liability in connection with this Agreement, whether in contract or tort or otherwise, will not exceed the amount OF FEES PAID OR OWED BY Customer TO Brandfolder UNDER THIS AGREEMENT DURING THE 12 month period preceding the event giving rise to such liability. the limitation of liabilities set forth in this section8 do not apply to a party's obligations under Section 7, to liability arising from a party's breach of section 9, or to liability arising from customer's breach of section 2.1 or 2.

9. Confidential Information

- **Confidential Information.** Each party (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Receiving Party**") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, customer, planning, and other confidential or proprietary information ("**Confidential Information**"). Any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. The Brandfolder Software, including without limitation any routines, subroutines, directories, tools, programs, or any other technology included therein, shall be considered Brandfolder's Confidential Information. Customer's Confidential Information includes the Customer Data.
- **Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose other than to perform obligations or exercise rights under this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- **Exceptions.** The Receiving Party's obligations under Section 9.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the

Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure or obtain a protective order.

- **Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control promptly upon the termination or expiration of this Agreement or the written request of the Disclosing Party; provided that the Receiving Party may keep one copy for its legal and archival purposes.

10. Term and Termination

- **Term.** The term of this Agreement will begin on the Effective Date and will continue for a period identified in an associated Order Form (the "Initial Term"), after which it shall automatically continue to renew for successive one year periods (each, a "Renewal Term") unless either party provides written notice to the other party of its intent to non-renew not less than 90 days prior to the end of the then-current Renewal Term. The Initial Term and Renewal Term are collectively referred to as the "Term". The Term may be sooner terminated as set forth herein.
- **Termination.** Either party may terminate this Agreement if the other party breaches any material provision of this Agreement, provided, that, where curable, the breaching party does not cure such breach within 30 days after receiving notice thereof.
- **Effects of Termination.** Upon termination or expiration of this Agreement, any amounts owed to Brandfolder under this Agreement before such termination or expiration will be immediately due and payable, all access rights to the Brandfolder Services granted in this Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the Brandfolder Software and Brandfolder Services. Sections 1, 4, 7, 8, 9, 3, and 11, together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

11. General

- **Compliance with Laws.** Each party shall comply with all applicable laws and regulations concerning the provision and use (as applicable) Brandfolder Services.
- **Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under the Agreement to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; except that each party may assign this Agreement, without consent, to an Affiliate or any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void.
- **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.
- **Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the first page of this Agreement, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.
- **Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its choice of laws rules. The parties expressly exclude the application of the United Nations Convention on the International Sale of Goods.
- **Remedies.** Except as provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Brandfolder Software contains valuable trade secrets and proprietary information of Brandfolder, that any actual or threatened breach of Section 2 or Section 9 may constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, and that Brandfolder is entitled to seek injunctive relief in the event of any such actual or threatened breach. If any legal action is brought by either party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.
- **Waivers; Severability.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- **Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. This Agreement may be executed in counterparts. Once signed, any unaltered reproduction thereof made by reliable means (g., photocopy, .pdf, email scan or facsimile) will be considered an original.

Exhibit A

Support Services

The terms and conditions in this Exhibit apply only if Customer has purchased Support Services.

1. Capitalized terms used but not defined in the Agreement shall have the meanings set forth in this Section 1:

- “**Error**” shall mean a reproducible defect in the Brandfolder Services when operated in accordance with the Documentation, which causes the Brandfolder Services not to operate substantially in accordance with the Documentation.
- “**Resolution**” shall mean a modification or workaround to the Brandfolder Services and/or Documentation and/or other information provided by Brandfolder to Customer intended to resolve an Error.
- “**Standard Business Day**” means 9:00 a.m. to 5:00 p.m. (Mountain Time), Monday through Friday (excluding regular U.S holidays and Brandfolder holidays).
- “**Standard Support Hour**” shall mean an hour during a Standard Business Day.

2. Support Services Provided

- **Telephone Support.** Brandfolder will provide telephone support during the Standard Support Hours. Telephone support will include the following:
 - Clarification of functions and features of the Brandfolder Services;
 - Clarification of the Documentation;
 - Guidance in operation of the Brandfolder Services;
 - Assistance in identifying and verifying the causes of suspected Errors in the Brandfolder Services; and
 - Advice on bypassing identified Errors in the Brandfolder Services, if reasonably possible.
- **Resolution of Errors.** For all inquiries received by Brandfolder during its Standard Support Hours, Brandfolder will provide an initial response according to the service level criteria in Table 1 below.
- **Travel and Other Expenses.** Support Services provided hereunder shall be provided at Brandfolder’s principal place of business. Should Customer request that Brandfolder send personnel to any Customer facility to resolve any Error in the Brandfolder Services, Customer shall pay Brandfolder’s reasonable, pre-approved travel, meals, and lodging expenses. Under such circumstances, Customer shall also pay actual costs for supplies and other expenses reasonably incurred by Brandfolder and necessary for the Support Services, which are not of the sort normally provided or covered by Brandfolder, provided that Customer has approved in advance the purchase of such supplies and other expenses.
- Brandfolder will provide the Support Services only for the Brandfolder Services. Brandfolder shall have no responsibility under this Agreement to fix any Errors to the extent arising solely out of or solely related to the following causes: (i) any Error caused by Customer or its Users, (ii) any Error or unavailability of the Brandfolder Services caused by use of the Brandfolder Services in any manner or in any environment inconsistent with its intended purpose, (iii) any of Customer’s hardware or software if modified or repaired in any manner which materially adversely affects the operation or reliability of the Brandfolder Services, or (iv) any equipment or software or other material utilized in connection with the Brandfolder Services used by Customer contrary to manufacturer’s instructions Any corrections performed by Brandfolder for such Errors shall be made, in Brandfolder’s reasonable discretion, at Brandfolder’s then-current time and material rates.

3. Customer Responsibilities

Except for training services provided by Brandfolder to Customer pursuant to an agreed training engagement, Customer is responsible for ensuring that all appropriate personnel are knowledgeable in the operation and use of the Brandfolder Services (pursuant to the Documentation) and associated equipment.

Table 1 – Severity Levels Table

Brandfolder will assign a severity level to each service request upon receipt of an Error from Customer pursuant to the descriptions set forth in Table 1 below. In some cases, it may be appropriate to upgrade or downgrade the severity level from its initial assignment. For example, if a work-around is identified and implemented for a Critical level problem, the severity level will be downgraded to a Medium level. An incident number will be assigned to each service request upon receipt. This incident number will be reported to Customer and used as a means to track support status.

Severity Level	Description	Response and Resolution
Critical	Brandfolder Services are inoperative or unusable. Critical or material impact on normal business operations.	Brandfolder will use commercially-reasonable efforts to contact Customer within 2 Standard Support Hours of the problem report. Brandfolder will use commercially-reasonable efforts to sustain Resolution activities as long as necessary during the Standard Business Day. Resolution will restore the Brandfolder Services to adequate operation as quickly as possible.
High	Brandfolder Services are partially inoperative and there are no work-arounds available. Less critical but severely restrictive impact on	Brandfolder will use commercially-reasonable efforts to contact Customer within 6 Standard Support Hours of the problem report. Brandfolder will use commercially-reasonable efforts to resolve the issue. Resolution will restore the Brandfolder Services or incorrect function to adequate operation within a reasonable timeframe.
Medium	Brandfolder Services are usable with limited functions. Work-around exists to prevent impact on business operations.	Brandfolder will use commercially-reasonable efforts to contact Customer within 10 Standard Support Hours of the problem report. Brandfolder will determine the activities necessary to resolve the problem and the timeframe in which Resolution can be completed. Customer may request that Resolution be accelerated. An accelerated schedule may result in additional fees.
Low	Brandfolder Services are usable but problem has been identified and correction is required.	Brandfolder will use commercially-reasonable efforts to contact Customer within 24 Standard Support Hours of the problem report. Brandfolder will determine the activities necessary to resolve the problem and the timeframe in which Resolution can be completed. Customer may request that Resolution be accelerated. An accelerated schedule may result in additional fees.
Suggestion	Brandfolder Services are usable and is functioning properly. A change or enhancement has been suggested by Customer.	Brandfolder and Customer will mutually agree on a Resolution. Additional costs may apply.