



TERMS AND CONDITIONS

The following terms and conditions must be agreed to by you as a condition to receiving the Services (as defined below) that BRANDmini LLC (the *Company*) provides. These terms and conditions form a binding legal contract, and by accepting these terms and conditions (this *Agreement*), you hereby acknowledge and agree that you have read, understood and agreed to be bound by the terms and conditions of this Agreement. If you are an individual, you represent and warrant to the Company that you are at least 18 years of age. If you are agreeing to this Agreement on behalf of a legal entity, you hereby represent and warrant to the Company that you have the due legal authority to bind such legal entity, on behalf of itself and any affiliates, and the terms *you* and *your* will refer to such legal entity (on behalf of itself and any affiliates). If for any reason you are unwilling or unable to agree to this Agreement, you must not accept this Agreement and must not use the Services or access the Company's website. If you provide access to or otherwise make available the Services in whole or in part in any form to any third person, including any directors, officers, managers, independent contractors, employees, or agents (*Third Party Users*), you hereby represent and warrant that you will ensure that such Third Party Users adhere to the terms and conditions of this Agreement and acknowledge and agree that you shall remain responsible and liable for the acts or omissions of all Third Party Users to the same extent as if you had carried out such acts or omissions yourself.

The Company may modify this Agreement in its sole discretion at any time without prior notice. The most current version of this Agreement is posted at <http://www.brandmini.com/termsandconditions>. Any changes to this Agreement become effective immediately upon posting of the same. Use of the Services following the posting of any modification or change will be treated as acceptance and understanding of such modified Agreement. You hereby agree and acknowledge that, if you do not agree with any changes or modifications made to this Agreement, your only remedy will be to discontinue use of the Services.

1. GENERAL TERMS

1.1 You understand that provision of the Services by the Company is conditioned upon your timely payment of the then-current fees posted at <http://brandmini.com/pricing-signup/>. In exchange for your agreement to this Agreement and payment of such fees, you will be granted access to the Services.

1.2 The Company may suspend your account at any time for failure to make timely payments. It is your responsibility to provide the Company with accurate and up-to-date billing information, and the Company is not responsible for any losses which occur as a result of disruptions in service for failure to make timely payments or keep timely billing information (including credit card billing details).

2. SERVICES AND LICENSE

2.1 The Company hereby agrees to provide to you the services of BRANDmini posted at <http://brandmini.com/pricing-signup/> (the *Services*). To the extent that any new features are added to the description of the Services, they are also covered by the terms of this Agreement and further subject to any payment which the Company may require in order to access such additional Services.

2.2 As part of the Services, you are receiving a non-exclusive, non-transferrable license to use the Company's proprietary technology and such license is subject to the full, faithful and continuous performance and observance by you of all of your obligations under this Agreement, as the same may be amended or modified from time to time. The Services (including your license to use the Company's proprietary technology) may be terminated at any time by the Company in its sole discretion for any reason set forth in this Agreement. The license granted hereby is solely a license to use the Company's proprietary

technology in compliance with this Agreement and is not a license to maintain, distribute, modify, enhance or create derivative works from any of the Company's proprietary technology.

2.3 Except as set forth in Section 2.2, above, you are not allowed to use, transmit or store, in any format whatsoever, any copyrighted, trademarked, proprietary or Company information (including extracts or screen shots of any Company Website, technology or applications) without the prior express written permission of the Company.

2.4 Notwithstanding any of the foregoing, any information provided or uploaded by you, or otherwise used in connection with the Services, shall remain your sole property.

2.5 Any rights not explicitly granted in this Agreement are hereby reserved by the Company.

3. YOUR OBLIGATIONS TO THE COMPANY

3.1 You hereby agree that you will not at any time:

(a) Use the Services or the license provided by Section 2.2 in a manner that (i) is misleading, defamatory, libelous, offensive, obscene, infringing or otherwise objectionable, (ii) suggests you are an affiliate, partner or otherwise related to the Company, or that the Company is related to any other individual or entity, (iii) would infringe upon any third party intellectual property rights (including, but not limited to, trademarks, copyrights or other protected information), (iv) implies or suggests that editorial content has been approved, authorized, composed, or edited by, or otherwise represents the views of, the Company or its directors, officers or employees, (v) the Company shall reasonably determine to have a negative or deleterious effect on the Company, its products, services or other licensee, (vi) harm minors in any way, (vii) impersonates any person or entity, or misrepresent any affiliation with any person or entity, (viii) uses a user name or e-mail address that implies that you are a different person or entity or which misrepresents your affiliation with any person or entity, (ix) uses a user name, e-mail address, name or other identifier that infringes on third party intellectual property rights (including, but not limited to, the use of trademarked or copyrighted material), (x) provides a user name and password to any third party for its use or otherwise attempts to transfer the existing license, (xi) engages in any use of "junk mail", "spamming", "chain letters", pyramid schemes or offers for investment opportunities, or other similar invasive and unsolicited advertising, (xii) engages in the transmission of any virus, Trojan horse, "time bomb", "Easter egg" or other malicious or dangerous computer code, file, program or software designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, (xiii) engages in any form of internet spying, including the installation of spyware or any similar program, computer code, file or cookie, (xiv) engages in "phishing" or any other form of request for personal information using deception or misrepresentation of any kind, (xv) defames, abuses, harasses, stalks, threatens or otherwise violates the legal rights of others, including without limitation others' privacy rights or rights of publicity, (xvi) harvests or collects information from any other licensee, (xvii) interferes with or disrupts the Company's servers or networks or its provision of services to any licensee, or (xviii) engages in any fraudulent or unlawful purpose, or otherwise intentionally or unintentionally violate any applicable local, state, Federal or international law;

(b) Sell, offer, upload, post, or provide information regarding, or transmit or make available content that (i) is or may be, in the Company's reasonable determination, unlawful, fraudulent, harmful, threatening, intimidating, degrading, abusive, harassing, tortious, defamatory, obscene, indecent, pornographic, encouraging criminal conduct, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or which could otherwise give rise to criminal and/or civil liability,

(ii) infringes any patent, trademark, trade secret, copyright or any other proprietary right of any person or entity, (iii) you do not have a right to make available under any law in any applicable jurisdiction or as the result of any contractual or fiduciary relationship (including, but not limited to, proprietary and confidential information, insider information and privileged communications), (iv) is personally identifiable information about any individual without such individual's express prior written consent, (v) is material, non-public information about any partnership, corporation, limited liability company or other legal entity without express prior written authorization, or (vi) pertains to the sale or distribution of prescription medication, any pornographic image, movie or computer file, or any investment product of any sort; and

(c) Perform any of the following activities: (i) modify, adapt, translate, reverse engineer, decompile or disassemble any portion of the Company's proprietary technology, (ii) remove any copyright, trademark or other proprietary rights notice from any Company product or materials originating from the Company, (iii) frame or mirror any part of the Company's proprietary technology, (iv) create a database by downloading and storing content from the Company, or (v) use any robot, spider, site search or retrieval application or other device to retrieve, index, "scrape," "data mine" or in any way gather content from any other licensee or from the Company, or reproduce or circumvent the navigational structure or presentation of the Company's website without the Company's express prior written consent.

3.2 You hereby acknowledge and agree that you understand the following:

(a) You are solely responsible for (i) maintaining the security of your account and personal information, (ii) updating any billing information to avoid disruptions in the Services, (iii) your use of the Services and any consequences thereof, (iv) any and all content which you post or make available in connection with the Services, and (v) any actions by any Third Party Users;

(b) The Company will not be liable under any circumstances for any direct, indirect, incidental, special, consequential or exemplary damages, including loss of profits, goodwill, use, data or intangible assets, for any reason whatsoever, including, but not limited to, interruption in the Services or inability to make use of the Services, any matter relating to third party applications (including interruption of any such applications or inability to make use of the same for any reason, including termination of the same), or any unauthorized modifications of any of your content by third persons;

(c) The Company cannot foresee or test the Services for every possible interaction, operating environment or functionality, and as a result the Company cannot guarantee or promise in any way that the Services will function without error in any particular environment or functionality. It is your sole responsibility to report errors to the Company;

(d) Technical processing and transmission of information related to the Services may be transferred unencrypted through various networks (including third party applications, systems and networks) as part of the normal functioning of the Internet, and the Company is not responsible for any misuse of information which results from such transmission; and

(e) Nothing contained in this Agreement is intended to create a partnership, joint venture or other legal entity and you shall not in any way represent to any third party that a partnership, joint venture or other legal entity has been formed as a result of this Agreement or your relationship with the Company hereunder generally.

4. DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY, RIGHT TO FEES

4.1 THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SERVICES AND ANY LICENSE PROVIDED, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND ALL SERVICES AND LICENSES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS ONLY. THE COMPANY FURTHER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY THAT SERVICES PROVIDED WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE.

4.2 IN NO EVENT SHALL THE COMPANY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY THE COMPANY FROM YOU HEREUNDER FOR THE MOST RECENT MONTH FOR WHICH PAYMENT IN FULL WAS RECEIVED.

4.3 NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT THE COMPANY’S ABILITY TO RECOVER DAMAGES FROM YOU FOR MATERIAL BREACHES OF THIS AGREEMENT OR LIMIT YOUR OBLIGATIONS HEREUNDER.

4.4 IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY TO YOU FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, BUT SHALL IN ALL CASES APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

4.5 YOU HEREBY AGREE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TO INDEMNIFY THE COMPANY AND HOLD IT HARMLESS AGAINST ANY CLAIM MADE OR BROUGHT AGAINST THE COMPANY BY A THIRD PARTY ALLEGING THAT ANY INFORMATION YOU PROVIDED OR USED, OR WHICH ANY OF YOUR THIRD PARTY USERS HAS PROVIDED OR USED IS IN VIOLATION OF THIS AGREEMENT, INFRINGES OR MISAPPROPRIATES THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR VIOLATES APPLICABLE LAW, AND SHALL INDEMNIFY THE COMPANY FOR ANY DAMAGES FINALLY AWARDED AGAINST, AND FOR REASONABLE ATTORNEY’S FEES INCURRED BY, THE COMPANY IN CONNECTION WITH ANY SUCH CLAIM.

4.6 YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL PAY ON DEMAND ALL OF THE COMPANY’S REASONABLE ATTORNEY FEES AND OTHER COSTS INCURRED BY THE COMPANY TO COLLECT ANY FEES OR CHARGES DUE TO THE COMPANY UNDER THIS AGREEMENT IN ADDITION TO ANY OTHER AMOUNTS SET FORTH IN THIS AGREEMENT. ADDITIONALLY, YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL PAY ALL OF THE COMPANY’S REASONABLE ATTORNEY FEES AND OTHER COSTS INCURRED BY THE COMPANY TO DEFEND AGAINST ANY ACTION BY YOU, UNLESS THE COMPANY SHALL BE DECLARED TO HAVE BEEN AT FAULT BY THE



UNAPPEALABLE AND FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, BUT SHALL IN ALL CASES APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

5. USE OF PROPRIETARY INFORMATION

5.1 You are only permitted to use the name “BRANDmini” or any logo of the Company to the extent that you are not in breach of the terms of the license provided in Section 2.2, and then only for the purpose of identifying yourself as a BRANDmini customer. Any other use of any Company name, designation, proprietary mark, trademark or logo shall be permitted only if the Company has given specific prior written permission, and then only for the purposes specifically authorized and only if you have satisfied all of the conditions placed upon such permission.

5.2 Subject to the limited rights expressly granted hereunder, the Company reserves all rights, title and interest in and to its products, names, designations, proprietary marks, trademarks, logos and all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

6. PAYMENT TERMS

6.1 You must provide the Company with valid credit card information in order to receive the Services. Thereafter, you must provide the Company with valid and updated credit card information at all times. The Services are provided on a “pay-as-you-go” basis and will be automatically charged to your credit card on a monthly basis or as otherwise selected by you. As a condition to receiving the Services, you hereby authorize the Company to charge your credit card for current costs. All charges shall be made in advance. The Company will provide you with electronic notification and receipt when your credit card is charged. You are solely responsible for maintaining complete and accurate billing and contact information. The Company uses a third party intermediary to manage credit card processing and this intermediary is not permitted to store, retain, or use your billing information except to process your credit card information for the Company.

6.2 In the event that the Company is unable to charge your credit card, your use of the Services and any license provided at such time will automatically be suspended beginning with the first day of the period for which no payment was successfully made. The Company will make commercially reasonable efforts to inform you of such failure to charge your credit card but is under no affirmative obligation to attempt to re-try credit cards or ensure that you receive notification of such failure. You will be solely responsible for entering updated and valid credit card information for the Company to charge your account. You recognize and agree that the Company does not charge for less than one month’s service, and that in the event there is a suspension you will not receive credit for any portion of any month for which service was not available if you wish to receive service for the remainder of such month.

6.3 The Company may in its sole and absolute discretion change the rates which it charges for any month for any type of service, or adjust the services provided in any package selected by you. In the event that this would result in any increase in the cost to you for the Services, the Company will notify you at least thirty (30) days in advance of such change so that you can decide whether to continue the Services, modify the package which you have agreed to or choose a different package. You will be required to acknowledge that you are aware of the changes prior to the Company charging your credit card, and any failure to make such acknowledgement will result in suspension of your account in the same manner as if your credit card could not be charged as set forth in Section 6.2, above.

6.4 You may terminate any Services upon notice to the Company at any time. You acknowledge that the Company may take two to three business days to process this request, and so any request for termination must come at least five (5) business days prior to the beginning of a new month of Services to avoid your credit card being charged. The Company may terminate this Agreement at any time for any reason whatsoever and will notify you of the same. The Services will also automatically terminate upon the beginning of insolvency or bankruptcy hearings against you or any court or administrative procedure in favor of your creditors (whether voluntary or involuntary). You hereby acknowledge and agree that in no event shall the Company be obligated to refund any fee or cost in the event that this Agreement is terminated for any reason.

6.5 Upon any termination, the Company shall have no obligation to maintain or provide to you any of your information in its possession, and the Company shall delete all of your information in its possession or under its control in the normal course of business unless legally prohibited from doing so by a competent government body having jurisdiction over the Company.

7. MISCELLANEOUS

7.1 No waiver by the Company of a breach of any provision of this Agreement shall operate or be construed as a waiver of any subsequent breach.

7.2 The Company may update this Agreement from time to time in its sole and absolute discretion, and will notify you of any changes in the terms and conditions of this Agreement. Continued use of the Services will constitute your consent to such changes. You may not amend or modify this Agreement without the prior written consent of the Company.

7.3 Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

7.4(a) This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Agreement shall be governed by, the law of the State of New York.

(b) You hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to this Agreement, and you hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or Federal court. You further hereby irrevocably waive, to the fullest extent that you may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. You agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) **YOU HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT YOU MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING.** You further hereby (i) certify that no representative, agent or attorney of the other has represented, expressly or otherwise, that the Company would not, in the event of a proceeding, seek to enforce the foregoing waiver and (ii) acknowledge that the Company has been induced to enter into this Agreement by, among other things, the waiver and certification in this paragraph.

7.5 You hereby agree that nothing in this Agreement shall entitle any person or entity other than the Company or you to any claim, cause of action or right of any kind. For purposes of clarity, your Third Party Users are explicitly precluded from making any claim, cause of action or right of any kind on the basis of this Agreement.

7.6 The Company may assign or transfer this Agreement or any of its obligations hereunder in its sole and absolute discretion and without any restrictions.

7.7 This Agreement constitutes the entire agreement between you and the Company pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of you, the Company or any third party pertaining to the subject matter of this Agreement.

7.8 The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof.

7.9 The language used in this Agreement will be deemed the language chosen by the Parties to express their mutual intent, and no rules of strict construction will be applied against either Party.

7.10 You shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (a) you represent that you are not named on any U.S. government list of persons or entities prohibited from receiving exports, and (b) you shall not permit customers or Third Party Users to access or use products or services in violation of any U.S. export embargo, prohibition or restriction.

7.11 You acknowledge that all of the foregoing constitutes a valid contract between you and the Company, even though it is electronic and has not been physically signed by you or the Company. In the event that the Company requests that you execute a physical copy of this Agreement, you hereby agree to comply with the same within thirty (30) days.