

# STANDARD TERMS AND CONDITIONS

By executing the Key Agreement Terms page of that certain Master Subscription and License Agreement to which this Exhibit B is attached, the Parties acknowledge and agree that these binding standard terms and conditions shall apply:

## 1. Definitions

- **“Authorized User”** means an individual service provider of Client who has been assigned a unique username-password combination to access and use the Product via an Individual Account created by such individual.
- **“Client Data”** means any data, files, text, graphics, images, software, works of authorship of any kind, and information or other materials that Client transmits to, uploads to, transfers to, processes on, stores in, or causes to interface with, Client’s Account or the Product, provided that any information constituting Authorized User Data (as defined below) shall not constitute Client Data.
- **“Documentation”** means the user documentation for the Product that Provider makes generally available to users. **“Privacy and Security Policy”** means Provider’s privacy and security policy related to use of the Platform accessible at <https://flashbrand.me>
- **“Provider Materials”** means the Product, any software programs, tools, utilities, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Provider or its personnel in connection with providing the Product and related services.
- **“Provider Software Suite”** means Provider products listed in [Schedule 1](#).
- **“Product”** means Provider’s software and platform and related services.
- **“Service Order”** means the service order Client and Provider from time to time execute substantially in the form attached here to as [Exhibit A](#) that sets forth the number of Authorized Users who may utilize the Product in connection with Client’s Account, fee schedule, License Period (as defined in Section 6) and other relevant terms. Each Service Order will expressly refer to this Agreement, will form part of this Agreement and will be subject to the terms and conditions contained herein.
- **“Authorized User Data”** means data, files, text, graphics, images, software, works of authorship of any kind, and information or other material that is transmitted, uploaded, transferred or otherwise submitted to or on behalf of an Authorized User’s Individual Account under this Agreement or otherwise.
- **2. Rights to Use the Product.** Subject to Client’s compliance with this Agreement, Provider grants Client and each of its Authorized Users a limited, non-exclusive, nontransferable, revocable license during the License Period to access and use the Product via Provider’s cloud-based services and mobile applications (subject to Client’s having a valid Client Account as described in Section 7 below), solely for Client’s internal business use. Such access and use is expressly limited to the number of Authorized Users set forth the applicable Service Order and each Authorized User’s agreement to comply with and be bound to an Individual User Agreement. Client’s rights in the Product will be

limited to those expressly granted in this Section 2. Provider and its licensors reserve all rights and licenses in and to the Product not expressly granted to Client under this Agreement. Provider may change or update the Product or certain features thereof from time to time, without prior notice to Client.

### 3. Prohibitions and Use Policies.

- **a.** Client acknowledges that the Product contains trade secrets of Provider and its licensors, and, in order to protect such trade secrets and other interests that Provider and its licensors may have in the Product, Client may not, and Client agrees not to, reverse engineer, decompile or disassemble the Product. In addition, Client may not, and Client agrees not to: (i) sell or sublicense the Product; (ii) modify the Product; (iii) distribute or copy the Product in whole or in part; (iv) use the Product in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement or Provider's applicable documentation; (v) access or use any areas of the Product for which Provider has not granted Client authorization, or tamper or interfere with Provider's computer systems or the technical delivery systems of Provider's providers; or (vi) encourage, authorize, or enable anyone to do any of the foregoing.
- **b.** Client acknowledges and agrees that Provider is not required to monitor or police communications or data transmitted through the Product and that Provider shall not be responsible for the content of any such communications or transmissions. Client shall use the Product exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others. Client shall keep confidential and not disclose to any third-parties, and shall ensure that Authorized Users keep confidential and do not disclose to any third-parties, any user identifications, account numbers or account profiles.
- **4. Subscription; Payment.** **a.** By subscribing to the Product, Client agrees to pay Provider the fees set forth in each applicable Service Order. In addition, Client will reimburse Provider for all reasonable and customary travel, lodging and other related expenses incurred by Provider or its personnel in connection with any additional services, including on-site training. **b.** Provider will issue Client an invoice at the end of each month during the License Period. Fees are payable and due within thirty (30) days after the date of invoice.
- **c.** Client agrees to pay all fees applicable to Client's subscription in accordance with Provider's prices that are in effect at the time of Client's order or the time of subscription renewal, as the case may be. Provider reserves the right to change the prices on Provider's price list at any time. All stated fees are exclusive of taxes or duties of any kind. Client will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, use and withholding taxes) associated with this Agreement or Client's use of the Product, except for taxes based on Provider's net income. If Provider is required to collect any tax for which Client is responsible, Client agrees to pay such tax directly to Provider. All past due amounts will incur interest at a rate of 1.5% per month or the maximum rate permitted by law, whichever is less.

- **5. Ownership; License to Feedback.** Provider and its licensors reserve sole and exclusive ownership of Provider Materials, and all copyrights, patents, trademarks, and other intellectual property rights therein. Provider Materials do not include Client Data. Client may not remove, alter, or obscure any copyright, trademark, or other proprietary rights notices appearing on the Product. If Client provides Provider with any suggestions, comments, or other feedback regarding the Product (“Feedback”), Client acknowledges that Provider shall receive a non-exclusive, perpetual, irrevocable, royaltyfree, worldwide license to use (or not use) any such Feedback in any manner and for any purpose, without compensation to Client and without implying or creating any interest on Client’s part in any of Provider’s products or services (including the Provider Materials) that may be based on such Feedback.

## **6. Term and Termination.**

This Agreement will commence on the Effective Date and unless terminated earlier in accordance with the terms of this Agreement, will remain in force and effect for the period set forth in the applicable Service Order (the “License Period”). The License Period may be extended by a new Service Order (or an amendment to an applicable Service Order) signed by both Parties. Any extensions or renewals may be conditioned upon Client’s execution of revised or new terms and conditions. Either Party may terminate this Agreement (including the Service Order) if the other Party breaches any material term of this Agreement or Service Order and fails to cure such breach within thirty (30) days after receipt of a written notice thereof. Provider may suspend Client’s Account (including individual Authorized User’s Account) and Client’s use of the Product as Provider deems appropriate to prevent, investigate, or otherwise address any suspected misuse of the Product. Upon the expiration or termination of this Agreement, Client will, within thirty (30) days after receipt of Provider’s invoice, pay all accrued and unpaid fees. The provisions of Sections 1, 3, 5, 6 and 8 to 18 will survive any expiration or termination of this Agreement.

## **7. Product Access; Account Registration.**

In order to access and use the Product, Client will need to register and create an account (Client’s “Account”). In order to access and use the Product, Authorized Users will separately register and create individual Accounts (each an “Individual Account”), and the use of such Individual Accounts will be subject to the terms of Provider’s Privacy Policy and of Provider’s Individual User Agreement to be executed in connection with registering such individual Account. Client agrees that Provider shall have no responsibility to Client with respect to the maintenance or operation of any Authorized User’s Individual Account, and that use of such Individual Accounts shall be governed by Provider’s Privacy Policy and the applicable Individual User Agreement. Client agrees to provide accurate, current and complete information about Client’s Account. Provider reserves the right to suspend or terminate Client’s Account or any Authorized User’s Individual Account, if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading. Client is responsible for maintaining the confidentiality of Client’s passwords and Account and agrees to notify Provider if any of the

passwords is lost, stolen, or disclosed to an unauthorized third-party, or otherwise may have been compromised. Client is responsible for all activities that occur under Client's Account, including the activities carried out by individual employees.

## 8. Data Ownership

- - a. Provider does not claim any ownership rights in Client Data or Authorized User Data. Nothing in this Agreement will be deemed to restrict any rights that Client may have to use and exploit Client Data.
  - b. Client hereby grants to Provider a nonexclusive, worldwide license to use, reproduce and transfer Client Data solely in connection with Client's use of the Product and Provider's provision of the Product to Client. Client represents and warrants that Client or Client's licensors own all right, title and interest in and to Client Data and that Client has all rights in Client Data necessary and sufficient to transmit to, upload to, transfer to, process on, store in, or cause to interface with, Client's Account or the Product, and to grant the rights contemplated by this Agreement. Client is solely responsible for all of Client Data, including but not limited to the development, transmission, operation, maintenance, storage, claims, and use of Client Data.
  - c. Provider and Client agree that all Authorized User Data shall belong solely to the applicable Authorized User and, therefore, Provider and Client will treat Authorized User Data as data owned by the applicable Authorized User and not by Client. Client acknowledges that Provider will have no obligation to Client with respect to the treatment of Authorized User Data, and that Provider's maintenance and use of Authorized User Data shall be governed by Provider's Privacy Policy and the applicable Individual User Agreement. Moreover, Client agrees to take all actions necessary to ensure all Authorized User Data is the sole property of the Authorized User.
  - d. Client consents to Provider's access, collection, transmission, storage, monitoring, copying, processing, analysis and use of Client Data to administer, develop and improve the Product and Provider's other products and services, and to monitor compliance with this Agreement.
  - e. Provider maintains the right, title, and interest in and to any data or information regarding the use or optimizing the use or sale of the Product, so long as such data does not include Client Data.

## 9. Data Maintenance and Backup Procedures.

Provider will follow its internal archival procedures for Client Data and Authorized User Data, including daily backup and record retention for thirty (30) days. Notwithstanding the foregoing, Provider shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Client Data or Authorized User Data caused by any thirdparty and shall have no obligation of any kind to restore any lost or corrupted data

## 10. Privacy and Security Policy.

Provider's Privacy and Security Policy is incorporated herein for all purposes and each Party agrees to the provisions contained therein. If any portion of this Exhibit B conflicts with any portion of the Privacy and Security Policy, the Privacy and Security Policy shall govern for all purposes.

## 11. Limited Warranty and Disclaimers

- **a.** Provider warrants that the Product will perform in all material respects in accordance with the Documentation. As Client's sole and exclusive remedy and Provider's entire liability for any breach of this limited warranty, Provider will at Provider's option and expense promptly correct the Product so that it conforms to this limited warranty. Provider makes no warranty that the Product will meet Client's requirements or be available on an uninterrupted, secure, or error-free basis.
- **b.** THE LIMITED WARRANTY SET FORTH IN SECTION 11.a IS IN LIEU OF AND PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CONCURRENT OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.
- **c.** Client assumes sole responsibility and liability for any output and/or results obtained from the use of the Product and for conclusions drawn from such use. Provider shall have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to Provider by Client in connection with the Product or any actions taken by Provider at Client's direction. Provider shall have no liability for any claims, losses or damages arising out of or in connection with Client's or any Authorized User's use of any third-party products, services, software or web sites that are accessed via links from within the Product.

## 12. Indemnity

- **a.** Client will indemnify, defend and hold harmless Provider and its officers, directors, employee and agents, from and against any third-party claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and professional fees, arising out of or in any way connected with (i) Client's access to or use of the Product, or (ii) the Client Data, provided that Provider: (a) promptly notifies Client in writing of the claim; (b) grants Client sole control of the defense and settlement of the claim; and (c) provides Client, at Client's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.
- **b.** Provider will indemnify, defend and hold harmless Client and its officers, directors, employees and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal

and professional fees, to the extent that it is based upon a third-party claim that the Product, as provided by under this Agreement and used within the scope of this Agreement, infringes any U.S. patent or any copyright or misappropriates any trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Client, provided that Client: (i) promptly notifies Provider in writing of the claim; (ii) grants Provider sole control of the defense and settlement of the claim; and (iii) provides Provider, at Provider's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim. If use of any of the Provider Materials and/or Product is, or in Provider's reasonable opinion is likely to be, the subject of a claim specified in Section 12.b. above, then Provider may, at its sole option and expense: (a) procure for Client the right to continue using the Provider Materials and/or Product; (b) replace or modify the Provider Materials and/or Product so that it is non-infringing while maintaining substantially equivalent in function to the original Provider Materials and/or Product; or (c) if options (a) and (b) above cannot be accomplished despite Provider's reasonable efforts, then Provider may terminate Client's rights and Provider's obligations hereunder with respect to such Provider Materials and/or Product and provide pro rata refund of unused/unapplied fees paid in advance for any applicable subscription term.

- **c. THE PROVISIONS OF THIS SECTION 12 SET FORTH PROVIDER'S SOLE AND EXCLUSIVE OBLIGATIONS, AND COMPANY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.**

### **13. Limitation of Liability**

PROVIDER'S TOTAL LIABILITY TO COMPANY FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO THE AMOUNTS PAID TO PROVIDER BY COMPANY FOR THE PLATFORM IN THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY. PROVIDER WILL NOT BE LIABLE TO COMPANY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR RESULTING FROM COMPANY'S ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE PLATFORM, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT PROVIDER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF AN EXCLUSIVE REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

### **14. Maintenance and Support**

- **a. Provider will provide Client with limited maintenance and support services for the Product, in accordance with and subject to the service level agreement set forth in Exhibit C (the "Service Level Agreement" or "SLA"). Provider reserves the right to amend the SLA without notice to Client.**

- **b.** Provider will have no obligation of any kind to provide support of any kind for problems in the operation or performance of the Product to the extent caused by any of the following: (i) non-Provider software or hardware products or use of the Product in conjunction therewith; or (ii) Client's use of the Product other than as authorized in this Agreement or as provided in the Documentation. If Provider determines that it is necessary to perform maintenance services for a problem in the operation or performance of the Product that is caused by either of the above problems, then Provider will notify Client and have the right to invoice Client for all such maintenance services performed by Provider and approved by Client.

## 15. Export Control

Client agrees to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Product, nor any direct product thereof, are: (i) downloaded or otherwise exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations, including but not limited to nuclear, chemical, or biological weapons proliferation.

## 16. Dispute Resolution

This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. Client and Provider irrevocably consent to the jurisdiction of, and venue in, the state or federal courts located in the Northern District of California for any disputes arising under this Agreement.

## 17. Publicity

Client agrees that Provider may identify Client as a customer of the Product, and display Client's name and logo (if any) in connection with such identification, on Provider's websites and in Provider's other published marketing materials. Provider will use good-faith efforts to comply with any reasonable trademark usage guidelines Client provides to Provider in connection with Client's name and logo.

## 18. General

- **a.** Assignment. Client may not assign this Agreement without Provider's prior written consent and any attempt to do so will be void, except that Client may assign this Agreement, without Provider's consent, to a successor or acquirer, as the case may be, in connection with the sale of all or substantially all of Client's assets. Subject to the foregoing, this Agreement will bind and benefit the Parties and their respective successors and assigns.
- **b.** No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will not be deemed an

election of remedies and will be without prejudice to its other remedies under this Agreement or available at law or in equity or otherwise.

- **c. Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.
- **d. Notices.** All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) twenty-four (24) hours after having been sent via electronic mail to the contact person at the address listed in each instance on Key Agreement Terms page unless a Party notifies the other Party in writing of a change to the contact person and/or the contact person's contact information. All such notices will be sent to the addresses set forth above or to such other address as may be specified by either Party to the other Party in accordance with this Section.
- **e. Waiver.** The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of each Party.
- **f. Entire Agreement.** This Agreement, together with all Service Orders, constitutes the complete and exclusive agreement of the Parties with respect to its subject matter and supersedes all prior understandings and agreements, whether written or oral, with respect to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the Parties hereto.
- **g. Force Majeure.** Neither Party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.
- **h. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## SCHEDULE 1

### PRODUCT DESCRIPTION

Flashbrand is a real-time employee feedback solution that sits at the heart of a new feedback culture. It simplifies HR and inspires a growth mindset by empowering all employees to continuously share their views and own their performance and development. Employees get better faster, and organizations adapt to the new world of work. Flashbrand put all employees in



the driver seat of their personal development by providing them with a new generation of HR mobile and web solution specifically designed for them.

- Request, receive or Send feedback to anyone, anywhere, anytime in less than 30 seconds
- Ask or receive feedback from peers, colleagues, employees, manager but also customers, partner and any person you are interacting with
- Capture anonymous and authored, solicited and non-solicited feedback
- Simple, easy-to-use mobile app and web interface
- Integration with Agenda and contact (iOS and Android devices) to connect and ask or give feedback at any interaction in few seconds
- Rich analytics for individuals, managers, and HR
- Completely configurable set of skills at company, organization or employee level
- Access configurable instant learning content and improve on the fly