



TERMS AND CONDITIONS OF USE

Before you set up your account to use Backprintsm, a photography service offered by brightroom, Inc. ("we," "us," or "brightroom"), please read the following Terms and Conditions of Use ("Terms") carefully. Please print these Terms and retain a copy for your files. By signing up for Backprint you agree to these Terms. Any access or use of, or attempt to access or use the Service for any unauthorized or illegal purpose is strictly prohibited. We reserve the right to change these Terms from time to time. Your continued use of the Service after we send to you changes to these Terms or post changes to these Terms on the Backprint Website constitutes your acceptance of the changes.

1. **The Service**

We will provide to you Backprint's suite of tools and services (the "Service") through the Backprint Office Website at <http://office.backprint.com> or accessed through www.backprint.com by clicking on Log-in ("Office Site"). Our Service allows you to:

- o upload your digital images to our system,
- o schedule and manage your events,
- o sort and display your images on a dedicated website ("*Customer Site*") hosted by us as part of a personalized storefront for you and your event images, and
- o market, sell and deliver images to your customers and event participants.

Once an order is received from your customer through your storefront, we handle all aspects of fulfillment, shipping, billing, and collections for you. You are the seller of the images and maintain direct contact with your customer. We do not handle customer service for your account, nor can your customers be redirected in any manner to us.

Other features of the Service are available through the Office Site. Your use of the Service is also governed by the Users' Guides and instructions, which are available to you. Please be aware that we regularly modify and update features and aspects of the Service.

We guarantee all orders against print damage or shipping damage. We do not guarantee your work, based on your image quality, cropping, or your customer's satisfaction. If you request a refund based on your customer's dissatisfaction with your work, you will be charged wholesale print cost and the 15% transaction fee based upon the retail order amount, and these charges will be assessed to your account.

2. **Your Submissions**

You are solely responsible for all images you upload or transmit with the Service. You must maintain a backup of all images you send to us—we are not responsible for any images or files transmitted to us or

which become damaged, lost or corrupted in transmission or on our system.

If you choose to utilize our thumbnail image upload option you are solely responsible for uploading the high-resolution image to us for fulfillment of any orders placed using the thumbnail proofs. We require that you upload the high-resolution image to us within two weeks of the order being placed and notice sent to you. We reserve the right to cancel any orders that become over thirty days old where we do not have the high-resolution image.

You may NOT upload or transmit to us material or images which:

- o are threatening, obscene, pornographic or profane material or any other material that violates civil or criminal laws; or
- o could or do misuse proprietary information, violate rights of privacy or publicity or infringe the intellectual property rights of third parties without the written permission of the owner of these rights and the persons (or their parents or legal guardians, where applicable) who are shown in the images.

For any material that you transmit or is posted using the Service, you warrant that:

- o The material is your original work or that you have written permission from the copyright owner of the material to use it with the Service;
- o You have all necessary right and authorization to (a) transmit the material to us, (b) to allow us to provide the Services with respect to that material and (c) post through the Service the images we produce for you from that material
- o The material is not defamatory, nor does it invade any right to privacy or publicity, or infringe upon any other party's rights, including intellectual property rights;
- o The material is not the subject of any litigation or claim that might give rise to litigation;
- o All moral rights in any transmitted materials have been waived; and
- o In the case of images from an event which are marketed to event participants, you are the official photographer for that event or are otherwise expressly authorized by the event organizer to capture and market images from the event and of event participants.

While we do not edit or monitor, and are not responsible for the content or use of any images sent to us, we reserve the right to delete, move or edit images that we, in our sole discretion, deem inconsistent with these requirements or which are otherwise unacceptable. We may require you to verify copyright or trademark ownership and other warranties, and may suspend shipment of an order until confirmation is received. If we do not receive confirmation or if we believe a violation of law or a third party's rights exists, we may share your account information with governmental or other

authorities or the affected third party. We will notify you if we are served with a subpoena or other legal document concerning you or your submissions. In the event of a dispute, we may suspend the display, viewing or sharing of any submissions until the issue has been resolved. You acknowledge that any submission may be removed, published, copied, modified, transmitted and displayed by us for the purposes of delivering the Service.

Your use of the Service constitutes permission to us to post the material and use it in connection with the Service, including allowing it to be posted on the Customer Site and to the recipient to reprint the material. We are not liable for the content of any image you send through the Service.

You further agree not to upload, post or otherwise transmit any images or files that contain viruses or computer code files or programs which could destroy, interrupt or limit the functionality of software or hardware or which could have other destructive effects on our system.

3. **The Websites**

You will be given access to the Backprint Office Site in order to transmit images to us, manage your account, effect sales and use the Service. You may not link to the Office Site or away from the Office Site without our prior written consent, which we may give or withhold in our sole discretion. We also reserve the right to remove a link to or away from the Office Site at any time and for any reason. Framing at this site and linking directly to images on our servers from external sites is expressly prohibited.

When you open an account, we will assign you a user ID and password. You can change your password. We recommend that you change it immediately and protect it from disclosure and misuse. You are responsible for all activity under your user ID and password.

We will host for you a separate website for your store front at which your images are displayed and which may be accessed by your customers for viewing and purchasing photographs and other products reflecting images posted by you (the "*Customer Site*" and together with the Office Site, the "*Sites*"). You may only use the Sites and the Service as described in these Terms.

Please be aware that while we strive to make the Sites available and accessible during the hours posted on the Sites, access may be unavailable for maintenance, upgrades, or technical or communication problems, or as a result of circumstances beyond our control.

4. **Your Account**

We will establish for you a separate account (your "*account*") which includes your user name and password, your Customer Site and your ability to access the Service. We may need to be able to access your account for the following reasons:

- We can remind you of your password in case you forget it; if this becomes necessary, we send an email upon your request to the address from which you opened your account;
- To maintain our Service to you and develop new or upgraded features and services;

- o To comply with a court order, subpoena, complaint or a lawful request from governmental or judicial authorities.

We reserve the right to close any account set up or used for fraudulent or inappropriate purposes or used to violate, or in violation of applicable law or these Terms.

5. **Pricing, Shipping and Payments**

For us providing the Service, you agree to pay us in accordance with our pricing schedule. You establish the retail price offered to your customers with the tools included in the Service. All prices are in U.S. dollars.

Our pricing to you generally consists of two components:

1) Transaction Fee:

When receiving orders from customers, we will charge you a transaction fee of fifteen percent (15%) of the gross selling price of an item not including shipping and handling fees, and any sales taxes (the "Gross Selling Price"). This fee includes all merchant account and bank fees.

2) Wholesale Fulfillment Cost:

When receiving orders from End-Users and customers, we will charge you the standard wholesale price for prints and/or any other products offered by you for sales and fulfilled by us.

The current pricing schedule, which we may change from time to time without notice, is located at www.backprint.com/pricing. Orders placed through our wholesale order process are not subject to transaction fees and require payment by credit card at the time of purchase.

Shipping and handling is charged directly to the end user and retained by us. We will calculate the shipping and handling amount on each order based upon the contents of the specific order. We will use the total weight of the order comprised of all component parts (including packaging and materials) to determine the class of shipping and amount. We will ship most prints via USPS Standard Mail and most products via FedEx Home Delivery Service unless Expedited shipping is selected in which case the consumer may select the method of shipping. This calculation will apply to all retail, wholesale and bulk orders priced under these Terms. We may adjust these rates from time to time and will pass along increases in USPS and FedEx rates. You understand that we markup the price of the shipping charges as we determine in our discretion.

Payment Processing: When a customer places an order on the Customer Site, that order is automatically added to your future payments. Your customer's credit card will only be charged when we ship the order. We maintain the merchant account with the credit card companies through which all transactions are processed. We do not establish a separate merchant account for you.

Your Payments: We will pay you every two weeks when the amount owed to you meets or exceeds \$20.00, based on the activity in that period.

The "Payments" report in the Office Site calculates the amount due to you. Payment will be in the form of a check sent via USPS, or ACH (electronic transfer) established based upon information provided to us by you. We will make any payments due payable to the payee listed

in your account profile. The payee should correspond to the tax identification number (social security number or corporate tax identification number) you provide us on the required IRS Form W-9.

6. **Canceling the Service; Discontinuing Inactive Accounts**

We reserve the right to cancel the Service and to discontinue accounts that have been inactive for more than 90 days. We may do so at our discretion after sending a warning by email or posting. If you do not respond to the email or posting within 10 days, your Account may be closed and your ability to use the Service suspended.

We may also suspend or cancel your Account and the Service:

- o Upon 30 days notice,
- o if you violate these Terms, or
- o if we think you are not using the account or the Service for a proper purpose.

We will give you advance notice of any suspension or cancellation.

7. **Third-Party Software and Links**

We may make software or services of a third- party available to you. To download or use such software or services, you must first agree to the applicable license or terms. Each software product or service is subject to the individual company's terms and conditions, and the agreement will be between you and the respective company. We make no warranties concerning, and assume no responsibility for third party services, programs, systems or data used with or through the Service or the Sites.

We may provide links to third-party sites that might be of interest to you. We are not responsible for the accuracy, copyright compliance, legality, legitimacy or decency of material contained in websites which may be accessible through a link to or from the Sites we maintain. It is your responsibility to become familiar with each site's privacy and other policies and terms of service, and to contact that site's Administrator with any concerns. A link on a Site is not and should not imply any endorsement by brightroom of such linked sites.

8. **Intellectual Property Ownership and Use**

Except as otherwise identified, the trademarks, including names, logos, slogans and service marks, appearing at the Sites, whether registered or unregistered, including Backprintsm and brightroomtm, are the property of brightroom or other third parties. No license or right to use our marks is granted. Such marks are not to be copied, reproduced, published or in any way used without our prior written permission or the written permission of the identified owner. The copyright in the content software, images, screens and property on the Sites (other than images you send to us and your name) are owned by brightroom or other third parties. No part of the Sites may be published, stored or transmitted in any form or means without the express written permission of brightroom or the copyright owner. You may use and download (where permitted) content displayed on the Web site for non-commercial, personal use only, so long as you do not modify the materials or remove any copyright and other proprietary notices contained in the content.

We are providing you the right to use the Services and tools and software included in the Service only as expressly provided in these Terms. No other rights are granted. You acknowledge that the Service and underlying systems and software are proprietary to us and that ownership of the Service and underlying components, systems and software of all patents, copyrights, trade secrets, trademarks, trade names, mask work rights and other proprietary rights relating to or residing therein will remain with us or our suppliers. You may not reproduce, modify, disassemble, reverse engineer, copy the Service or any component. You may use the Service only for your own personal or business purpose in accordance with these Terms and may not sell, license or give others the right to use the Service. Any rights not expressly granted in these terms are reserved to us.

9. **Privacy Policy and Confidentiality**

When you create an Account, you will provide some personal information, such as your name, email address, and mailing address. We protect and use this information as set forth in our Privacy Policy. Information about your customers, which is furnished to us when they place orders with us, is also subject to our privacy policy.

11. **Copyrights**

Backprint is committed to protecting photographers' copyrights. You are required by US law to own the right to or to obtain permission to use any image before the image is uploaded or printed through Backprint. If you believe that your copyright has been infringed, please contact us at the following address and provide all relevant details.

Customer Service – Attn. Copyright Protection Backprint
3333 Quorum Drive, Suite 200.
Fort Worth, TX 76137
FAX 817.665.0047
copyrightprotection@backprint.com

12. **Age Requirements**

Individual accounts may only be opened by, and the Service used by persons at least 18 years of age.

13. **Indemnification**

You agree to indemnify, defend and hold harmless us, our officers, directors, employees, agents, licensors, suppliers and any third-party information providers to the Service from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms, any claims from any of your customers, employees, agents or vendors (except for claims directly caused by our willful misconduct) your use of the Service or any activity related to your Account (including negligent or wrongful conduct) by you or any other person accessing the Service or using your Account, including, but not limited to, claims that the images you transmit through, or post using the Service infringe or violate any third party intellectual property or proprietary rights.

14. **Claims**

Any action against us relating to the Service must be brought, if at all, within one (1) year from the accrual of the cause of action. All claims and disputes are subject to the state and federal laws of the state of Texas. You consent

to jurisdiction and venue in the courts of the Eastern District of Texas located in Dallas, Texas. You waive any right to a jury trial in any suit arising out of or relating to the Service.

15. **Export**

You agree to comply with all applicable export laws, regulations and restrictions when you use or export any software or materials provided through the Service.

16. **Disclaimer of Warranties**

THE SERVICE AND ALL INFORMATION OR CONTENT ON OR OBTAINED THROUGH OR IN CONNECTION WITH THE SERVICE ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT. WE DO NOT WARRANT THAT THE SERVICE, THE SITES, ANY INFORMATION, CONTENT OR OTHER MATERIAL WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SERVICE, THE SITES, TOOLS, MATERIAL, INSTRUCTIONS OR OTHER PRODUCT OR ANY THIRD PARTY SERVICES, PROGRAMS, SYSTEMS OR DATA USED WITH OR THROUGH OR PROVIDED BY US WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY DEFECTS IN SUCH INFORMATION, THE SERVICE, THE SITES, SYSTEMS, INSTRUCTIONS, DATABASES OR MATERIALS WILL BE OR CAN BE CORRECTED. IN NO EVENT ARE WE LIABLE TO YOU OR YOUR CUSTOMERS (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY YOU) FOR ANY CLAIMS AT ANY TIME ARISING FROM OR RELATED TO THE SERVICE OR THE SITES, IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

17. **Limitation of Liability**

We and our employees, agents, representatives, licensors and suppliers are not in any event liable to you, your customers, or to any third party for any lost profits, revenues, business opportunities or business advantages whatsoever, nor for any direct, indirect, special, consequential, indirect or incidental losses, damages or expenses, even if we have been advised of the possibility of such damages, that result from the use, misuse or the inability to use the Service or any Site, or any backprint information, content or other material or software used, or from unauthorized access to or alteration of your transmissions or data. Some jurisdictions do not allow the limitation or exclusion of incidental, consequential or other types of damages, so some of the above limitations may not apply to you.

18. **Independent Contractor Relationship and Taxes**

Nothing in these Terms is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Our relationship is limited to providing the Service to you as provided in these Terms. You are not authorized to make any representation, contract or commitment on behalf of us.

Upon your instruction to do so, we will collect state and local sales and use taxes, on your behalf, from your customers on transactions effected by you through the Service, but you are solely responsible for determining the

applicability of sales/use taxes to your sales transactions, the applicable tax rates, and for obtaining exemption certificates or other documentation supporting the application of sales/use tax exemptions to your sales transactions. We do not provide any advice regarding taxes, and we make no representations to you or your customers regarding the application of sales tax laws and requirements to you or any sales transaction you make through the Service. The Service will be configured to collect sales/use taxes, at the tax rates and from the customers directed by you. We will deliver the total amount of sales/use taxes collected on your behalf to you, for you to duly report and remit to the appropriate taxing authorities. You indemnify and agree to hold us harmless from any and all claims, damages, liabilities and losses we incur or suffer relating to any failure by you to collect and remit sales/use taxes with respect to your sales transactions effected through the Service to the appropriate collecting agencies.

You are also responsible for the filing of returns and payment of any federal, state or local income, franchise, gross receipts and other business privilege taxes that may be imposed on your business activities.

No part of the payments to you will be subject to withholding by us for the payment of any social security, federal, state or any other employee payroll taxes. We will regularly report amounts paid to you by filing Form 1099-MISC with the Internal Revenue Service as required by law. We require that you complete and submit to us IRS Form W-9 before you will receive your first payment from us.

19. **Policy for Idea Submission**

We often receive from customers and others ideas for products and services to be used at Backprint, either independent of, or in conjunction with, our internally developed concepts. We appreciate interest in improving our service; however, please note our policy on external idea submission:

- o Unsolicited ideas submitted to us or any of our employees automatically become our property, and
- o By submitting unsolicited ideas to us, you automatically forfeit your right to the intellectual property of these ideas.

If you intend to own the intellectual property rights of your ideas in any way (patent, trade secrets, copyright, trademark, etc.) please do not submit your concepts or prototype samples to us or our employees.

20. **Miscellaneous**

We may assign our rights and responsibilities under these Terms without notice to you.

All items purchased through Backprint are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to your customer upon our delivery to our carrier.

When your customers place an order, we will not bill them until we ship the items ordered. Backprint reserves the right to ship partial orders (at no additional cost to you). The portion of the order that is partially shipped may be charged to your customer at the time of shipment.

Your use of the Service or other materials, and any and all other matters between us and you, are governed by applicable United States federal law and the laws of the State of Texas. If any part of the Terms is held to be invalid or unenforceable, then the remaining parts will continue to be valid and enforceable. The invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision most closely matching the intent of the original provision and the remainder of the Terms will continue in effect. These Terms constitute the entire agreement between you and us with respect to the Service, and supersede all other communications, written or oral, with regard to the Service. No waiver or amendment of any provision of these Terms is effective against us unless it is expressed in a writing signed by us.