



## **Brigade Application End User Terms of Service**

Effective: January 1, 2018

THESE END USER TERMS OF SERVICE (“TERMS OF SERVICE”) FORM A BINDING AGREEMENT BETWEEN YOU (“YOU,” “YOUR”) AND POSNegrone LLC (DBA BRIGADE SOCIETY, “BRIGADE”). (“BRIGADE”, “WE,” “US,” “OUR”) PLEASE READ THESE TERMS OF SERVICE CAREFULLY, BECAUSE BY DOWNLOADING, ACCESSING OR USING THE BRIGADE APPLICATION, PRODUCTS AND/OR SERVICES (“SERVICES”) YOU ARE ACKNOWLEDGING THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO THE TERMS OF SERVICE OR BRIGADE’S PRIVACY POLICY YOU MAY NOT DOWNLOAD, ACCESS OR USE THE SERVICES.

### **1. Use of the Platform**

1.1 You may only access and use the Services if you are an authorized employee of a Brigade customer (“Merchant”) that has paid for a software subscription for Brigade Services pursuant to a merchant agreement entered into between Brigade and Merchant (the “Merchant Agreement”). Brigade grants you a limited, revocable, non-exclusive, non-transferable license to access and use the applicable Services during the course of your employment with Merchant, solely and exclusively for Merchant’s internal business purposes.

1.2 You agree to use the Platform only for the management and operation of Merchant’s business pursuant to the terms and conditions of the Merchant Agreement and not directly or indirectly:

- (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Brigade App, products or services;
- (b) modify, translate, or create derivative works based on the Brigade App, products or services; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Brigade App, products or services;
- (c) use or access the Brigade App, products or services to build or support, and/or assist a third party in building or supporting, products or services competitive with the Brigade App, products or services;
- (d) remove or obscure any proprietary notices or labels from the Brigade App, products or services;
- (e) use the Services for any fraudulent undertaking or in any manner that could damage, disable, overburden, impair or otherwise interfere with Brigade's provisioning of the Services;
- (f) violate or breach any operating procedures, requirements or guidelines regarding Merchant’s use of the Services that are posted on or through the Brigade App or otherwise provided or made available to Merchant;
- (g) alter, distribute, license, resell, transfer, assign, rent, lease, timeshare or

otherwise commercially exploit the Services to any third- party or provide it as a service bureau; (h) conduct any penetration or vulnerability testing on the Service or network; or (i) copy any features, functions, text or graphics of the Services, including without limitation, the structure, sequence or organization of the user interface.

## **2. Ownership of Content, Use of Trademarks**

2.1 Brigade owns or has license to all rights, title, interest, copyright and other worldwide intellectual property and trade secret rights in and to the Services (including all derivatives or improvements thereof). You may voluntarily submit suggestions, enhancement requests, ideas, feedback, recommendations or other input about the Services (“Feedback”) at any time. You irrevocably assign all right, title, interest and other worldwide intellectual property rights in and to the Feedback to Brigade and acknowledge that we are free to use, disclose, reproduce and otherwise exploit any and all Feedback provided by you relating to the Services in our sole discretion, entirely without obligation or restriction of any kind. Any rights not expressly granted herein are reserved by Brigade.

2.2 User Content. You, (or Merchant, if applicable) retain all rights, title and interest in and to any text, graphics, videos, images or other data that you upload to the Services (“User Content”). You grant to Brigade a non-exclusive, royalty-free, fully paid-up, worldwide license to access, use, copy, modify (including the right to create derivative works of), display and transmit User Content solely for the purpose of our providing the Services. You are solely responsible for the accuracy, quality, content and legality of User Content, the means by which User Content is acquired, and any transfer of User Content outside of the Services by you, Merchant or any third-party authorized by you. You represent, warrant and covenant that you have all rights necessary to upload the User Content to the Services and to otherwise have such User Content used or shared, as applicable, in relation to the Services.

2.3 The trademarks, service marks, and logos of Brigade (the “Brigade Trademarks”) used and displayed on the Services are registered and unregistered trademarks or service marks of Brigade. Other Brigade product, and service names located in the Services may be trademarks or service marks owned by third-parties (the “Third-Party Trademarks”, and, collectively with the Brigade Trademarks, the “Trademarks”). Nothing in this Agreement should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed in the Services without the prior written consent of Brigade specific for each such use. The Trademarks may not be used to disparage Brigade or the applicable third-party, Brigade’s or third-party’s products or services, or in any manner that may damage any goodwill in the Trademarks. Except as described herein, the use of any Trademarks is prohibited without Brigade’s prior written consent. All goodwill generated from the use of any Brigade Trademark or Third-Party Trademark will inure to Brigade’s, or the applicable Third Party’s benefit, as applicable.

### **3. Limitation of Liability and Disclaimer of Warranties**

3.1 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, BRIGADE AND ITS THIRD-PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY. BRIGADE AND ITS THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE RESULTS YOU MAY OBTAIN BY USING THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BRIGADE AND ITS THIRD-PARTY PROVIDERS DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF THE SERVICES WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE THAT NEITHER BRIGADE NOR ITS THIRD- PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. BRIGADE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. WITHOUT LIMITING THE FOREGOING, BRIGADE DOES NOT WARRANT OR GUARANTEE THAT ANY OR ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY BRIGADE, THE SERVICES ARE PROVIDED TO MERCHANT ON AN "AS IS" BASIS.

3.2 IN NO EVENT WILL BRIGADE BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICES, EVEN IF BRIGADE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN HAS FAILED ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW BRIGADE'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO ONE HUNDRED DOLLARS (\$100).

3.3 Some states do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. IN SUCH STATES, THE LIABILITY OF THE BRIGADE PARTIES WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

3.4. You agree to defend, indemnify and hold harmless Brigade and its directors, officers, employees, affiliates and agents from and against any claims, actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement or your access to, use or misuse of the Third-Party Content or Services. Brigade will provide notice to you of any such claim, suit, or proceeding. Brigade reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Brigade's defense of such matter.

#### **4. Payment of Fees**

4.1 You will pay Brigade the applicable fees described in the Brigade Quote for the Services and Implementation Services. If your use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), you shall be billed for such usage and you agree to pay the additional fees in the manner provided herein. Brigade reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current renewal term, upon thirty (30) days prior notice to you (which may be sent by email). If you believe that Brigade has billed you incorrectly, you must contact Brigade no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Brigade's customer support department.

4.2 You are allotted 2GB of Verizon data per month for use of your 4G/LTE router. If you go over the allotted amount, you will be charged the prorated amount of \$20 USD per 1GB. Brigade is not obligated to notify you of when overages have occurred.

#### **5. Term and Termination**

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term and shall be automatically and indefinitely renewed for additional periods of one (1) month as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. You will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Brigade will make all Customer Data available to Customer for electronic retrieval for a period of five (5) days, but thereafter Brigade may, but is not obligated to, delete stored Customer Data.

## **6. Arbitration**

6.1 Agreement to Arbitrate. This Section is referred to as the Arbitration Agreement. You agree that any and all disputes or claims that have arisen or may arise between you and Brigade, whether arising out of or relating to this Agreement or in connection with your use of the Services, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small claims court, if your claims qualify. You agree that, by agreeing to these Terms of Service, you and Brigade are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. Notwithstanding the foregoing, this Arbitration Agreement shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Arbitration Agreement.

6.2 Prohibition of Class and Representative Actions and Non-Individualized Relief. You and Brigade agree that each may bring claims against the other only on an individual basis and not as plaintiff or class member in any purported class or representative action or proceeding. Unless both you and Brigade agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s).

6.3 Pre-Arbitration Dispute Resolution. Brigade is always interested in resolving disputes amicably and efficiently, and most participant concerns can be resolved quickly and to the participant's satisfaction by emailing Brigade's support team at support@Brigadetab.com. If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). Attn: General Counsel. ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If you and Brigade do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Brigade may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Brigade or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Brigade is entitled.

6.4 Arbitration Procedures. Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Commercial Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. If there is any inconsistency between any term of the AAA Rules and any term of

this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. The arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under this Agreement and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. Unless you and Brigade agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, Brigade agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

6.5 Costs of Arbitration. Payment of all filing, administration, and arbitrator fees (collectively, the “Arbitration Fees”) will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. Any payment of attorneys’ fees will be governed by the AAA Rules.

6.6 Confidentiality. All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

6.7 Severability. If a court or the arbitrator decides that any term or provision of this Arbitration Agreement other than clause 6.2 above is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of clause 6.2 is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of these Terms of Service will continue to apply.

## **7. Compliance with Laws**

7.1 You agree to comply with all federal, state, local and foreign laws, rules and regulations applicable to you and Merchant’s business in relation to your use of the Services, including any applicable tax laws and regulations, the then-current version of the Payment Card Industry Data Security Standards as made available at <https://www.pcisecuritystandards.org> and the by-laws, and any and all other rules, policies and procedures of VISA, MasterCard, Discover and/or other card networks as in effect from time to time.

8.2 The United States controls the export of products and information. You expressly agree to comply with such restrictions and not to export or re-export any part of the Services to countries or persons prohibited under the export control laws. By accessing, using or downloading the Services, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You are solely responsible for compliance with the laws of your specific jurisdiction regarding the import, export or re-export of the Services.

## **8. Miscellaneous**

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms of Service, which will remain in full force and effect. Failure of Brigade to act on or enforce any provision of these Terms of Service will not be construed as a waiver of that provision or any other provision herein. No waiver will be effective against Brigade unless made in writing, and no such waiver will be construed as a waiver in any other or subsequent instance. Except as expressly agreed by Brigade and you, these Terms of Service constitutes the entire agreement between you and Brigade with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, whether written or oral, between you and Brigade with respect to the subject matter. The section headings are provided merely for convenience and will not be given any legal import. These Terms of Service will inure to the benefit of our successors and assigns. You may not assign these Terms of Service without our prior written consent. Any information submitted or provided by you to the Services might be publicly accessible. Important and private information should be protected by you.