

Hosting Agreement Terms and Conditions

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BRIGHTWORK LICENSES THE HOSTED BRIGHTWORK USAGE TO NETCONNECT'S CUSTOMER UPON THE EXPRESS CONDITION THAT CUSTOMER ACCEPTS ALL OF THESE TERMS AND CONDITIONS. CUSTOMER MUST ACCEPT THESE TERMS AND CONDITIONS EACH TIME CUSTOMER ACCESSES THE SERVICE OR OTHERWISE USES THE SERVICE, CUSTOMER AFFIRMATIVELY STATES THAT CUSTOMER ACCEPTS THESE TERMS AND CONDITIONS. ONLY A REPRESENTATIVE OF THE CUSTOMER WHO IS AUTHROIZED TO BIND THE CUSTOMER SHOULD CLICK-THRU THIS AGREEMENT.

**BRIGHTWORK IS UNWILLING TO PROVIDE CUSTOMER WITH ACCESS TO THE SERVICE UNLESS CUSTOMER ACCEPTS THESE TERMS AND CONDITIONS.**

**1. General.** The hosted Software, consisting of access to certain application software, content and/or other information, and other content owned or licensed by BRIGHTWORK and/or its suppliers, licensors or other third parties (collectively, the "**Contributors**"), is provided by BRIGHTWORK.

**2. Restricted License.** Subject to these terms and conditions, BRIGHTWORK hereby grants to Customer (and Customer accepts) a non-exclusive, non-transferable license to access and use the Software within this Hosted environment. All rights not expressly granted to Customer are hereby reserved by BRIGHTWORK and/or the respective Contributor. BRIGHTWORK and each Contributor shall have the right to assert and enforce the provisions of this Article 2 directly on its own behalf. Customer agrees to abide by these terms and conditions.

**3. Intellectual Property Rights.** It is hereby understood and agreed that BRIGHTWORK is the owner of all rights, title and interest, including all Intellectual Property Rights (as defined below) to the Software. For the purposes of this Agreement, "**Intellectual Property Rights**" shall mean any and all of the following: (a)rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (b)Trademark and trade name rights and similar rights; (c)Trade secret rights; (d)Patens, designs, algorithms and other industrial property rights; (e)All other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated, including, but not limited to logos, "rental" rights, rights of publicity, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and (f)All registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

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Customer is not permitted to: (a) rent, lease, assign or transfer all or any part of the Software and/or Customer's Account Information to any person or entity without the prior written consent of BRIGHTWORK; (b) remove any proprietary notices, labels, or marks on any component of the Software (or the Software or Site generally), whether in machine language or Source Code; (c) use the Software to provide a service bureau by which the Software can be accessed by third parties or by which information produced pursuant to the Software is sold or given to third parties via pay per call or other arrangements; or (d) sublicense, assign, delegate or otherwise transfer this license or any of the related rights or obligations for any reason without the prior written consent of BRIGHTWORK (any attempt to sublicense, assign, delegate or transfer this license, either by contract, statute, corporate merger of any sort, regulation or court order, without the prior written consent of BRIGHTWORK shall be voidable at BRIGHTWORK's sole and absolute discretion). Failure to comply with these restrictions will result in automatic termination of this Agreement.

**4. BRIGHTWORK WARRANTIES.**

CUSTOMER EXPRESSLY AGREES THAT USE OF BRIGHTWORK'S SOFTWARE IS AT CUSTOMER'S SOLE

RISK.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY OTHER AGREEMENT TO THE CONTRARY, THE SOFTWARE IS FURNISHED "AS IS" AND WITH ALL FAULTS. BRIGHTWORK MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY COMMUNICATION WITH CUSTOMER. BRIGHTWORK AND ITS CONTRIBUTORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND NON-INFRINGEMENT, ANY WARRANTY THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, AND/OR THE FAILURE TO PROVIDE ADEQUATE SUPPORT FOR THE SOFTWARE. BRIGHTWORK DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF INACCURACIES, ERRORS, BUGS, INTERRUPTIONS OR OTHER PROGRAM LIMITATIONS. NOR DOES BRIGHTWORK WARRANT THAT THE SITE, OR SERVER THAT MAKES IT AVAILABLE, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH CUSTOMER, AND CUSTOMER AGREES TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS.

CUSTOMER SPECIFICALLY AGREES THAT BRIGHTWORK SHALL NOT BE RESPONSIBLE FOR THE UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER'S TRANSMISSION(S) OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY TRANSMISSION(S) ENTERED IN THROUGH THE SOFTWARE, ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSIONS, INTERRUPTION, DELETION OF FILES, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION. CUSTOMER ALSO AGREES THAT BRIGHTWORK IS NOT RESPONSIBLE FOR ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY THIRD PARTY OR ANY INFRINGEMENT OF ANOTHER'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS.

CUSTOMER AGREES THAT THE LIABILITY LIMIT OF BRIGHTWORK SHALL **IN NO EVENT** BE GREATER THAN THE AGGREGATE DOLLAR AMOUNT WHICH CUSTOMER PAID DURING THE TERM OF THIS AGREEMENT THAT SPECIFICALLY RELATED TO THE BRIGHTWORK SOFTWARE, INCLUDING ANY REASONABLE ATTORNEYS' FEES AND COURT COSTS. IF THE AGREEMENT RUNS LONGER THAN ONE YEAR, THE MAXIMUM LIABILITY OF BRIGHTWORK WILL NOT EXCEED THE TOTAL SUM OF THE PAYMENTS RELATED TO THE BRIGHTWORK SOFTWARE FOR THE YEAR IN WHICH THE FAILURE OCCURS. UNDER NO CIRCUMSTANCES SHALL THE LIABILITY OF BRIGHTWORK BE GREATER THAN 5,000 EUROS IN TOTAL.

BrightWork shall not be liable to Customer for any lost profits, lost opportunities, or incidental or consequential damages under any circumstances, even if BrightWork has been warned of the possibility of such damages.

**5. Indemnification.** Customer agrees to indemnify and hold harmless each and every Contributor, and their respective affiliates, officers, directors, employees, consultants, agents, licensees and licensors from any claim, demand, or damages, including reasonable attorneys' fees, asserted by any third party due to, arising out of, or in any way related to, the use of the Software under Customer's Account or the hosted service provided by Partner. As used in this Agreement, "affiliate" means any entity which controls, is controlled by, or is under common control with the named entity.

**6. Equitable Relief.** Customer acknowledges that, at the time this Agreement is entered, it would be impossible or inadequate to measure and calculate all of BRIGHTWORK's damages for the breach of certain provisions of this Agreement and that it would require a court of competent jurisdiction to ascertain BRIGHTWORK's damages. Accordingly, if Customer breaches or threatens to breach any of Customer's obligations, other than payment when due, BRIGHTWORK shall be entitled, without showing or proving any actual damage sustained, to a stipulated temporary restraining order, and shall thereafter be entitled to apply for a preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of Customer's obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting BRIGHTWORK from pursuing or obtaining any other remedies as otherwise available to it for such actual or threatened breach, including recovery of damages.

**7. Applicable Law.** This agreement is governed by the laws of the Commonwealth of Massachusetts and applicable U.S. federal law and the state and federal courts located in Boston, Massachusetts USA shall have exclusive jurisdiction and venue over any claim arising from this agreement, the Software, or the relationship of the parties.

**8. Entire Agreement.** This agreement is the entire agreement between Customer and Aimware d/b/a BrightWork relating to this subject matter and it supersedes all prior oral or written communications, agreements, proposals and representations. To the extent the terms of this agreement conflict with the terms of the NetConnect agreements, the terms of this agreement shall control. However, all non-conflicting provisions of the NetConnect Agreement shall remain in full force and effect.