

Mosio, Inc.

Terms and Conditions

The following terms and conditions (the “**Terms and Conditions**”) shall be deemed incorporated by reference into each purchase order (the “**Purchase Order**”) between Mosio, Inc. (“**Mosio**”) and the client identified therein (“**Client**”). The Terms and Conditions and the applicable Purchase Order shall be collectively known as the “**Agreement**.”

1. Introduction. Pursuant to each Purchase Order, Mosio will implement a mobile and web-based organizational collaboration framework (the “**Mosio Service**”) for the benefit of Client utilizing Mosio’s suite of collaboration tools and services (the “**Mosio Platform**”).

2. Specifications; Implementation. The specifications and implementation time table for the Mosio Service will be set forth on the applicable Purchase Order. Any exceptions must be approved by the parties in writing.

3. Terms of Payment. Client shall pay Mosio the fees set forth in the Purchase Order, due and payable as indicated therein. Client shall be solely responsible for the payment of, and shall pay when due and indemnify Mosio against, all applicable federal and state taxes, including any sales, use, excise or transfer taxes and other taxes associated with payments to Client under this Agreement (except for taxes assessed on Mosio’s net income). Unless specifically provided in the Purchase Order, no cash discounts, volume discounts or other discounted rates will be available to Client.

4. Compliance with Laws. Client will not, will not agree to, and will not authorize or encourage any third party to (a) interfere or attempt to interfere with the proper working of the Mosio Service or any other client’s use of the Mosio Service; or (b) use the Mosio Service for any fraudulent or unlawful purpose. Violation of any of the foregoing may result in immediate termination of this Agreement, at Mosio’s sole discretion, and may subject Client to state and federal penalties and other legal consequences. Mosio reserves the right, but will have no obligation, to review Client’s use of the Mosio Service in order to determine whether a violation of this Agreement has occurred or to comply with any applicable law, regulation, legal process, or governmental request.

5. Representations and Warranties. Without limiting any other representation, warranty or covenant herein, each party hereby represents and warrants to the other party that: (a) it has the full right, power and authority to enter into this Agreement; (b) this Agreement is a valid and binding obligation of such party; and (c) it has obtained and shall maintain throughout the term of this Agreement all necessary licenses, authorizations, approvals and consents to enter into and perform its obligations hereunder in compliance with all applicable laws, rules and regulations.

6. Indemnification. Each party agrees to indemnify and hold the other party and its affiliates harmless from and against any losses, costs, liabilities and expenses, including attorneys’ fees, arising out of the breach of the representations, warranties and covenants made by such party herein. Mosio reserves the right, at Client’s expense, to assume the exclusive defense and control of any matter for which Client is required to indemnify Mosio and Client agrees to cooperate with Mosio’s defense of such claims.

7. Disclaimers; No Warranties. MOSIO MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. MOSIO DOES NOT WARRANT THE RESULTS OF USE OF THE MOSIO SERVICE, AND CLIENT ASSUMES ALL RISK AND RESPONSIBILITY WITH RESPECT THERETO.

CLIENTS SHOULD NOTE THAT IN USING THE MOSIO SERVICE, SENSITIVE CLIENT INFORMATION WILL TRAVEL THROUGH THIRD PARTY INFRASTRUCTURES WHICH ARE NOT UNDER MOSIO’S

CONTROL (SUCH AS A THIRD PARTY SMS DELIVERY PLATFORM). MOSIO MAKES NO WARRANTY WITH RESPECT TO THE SECURITY OF SUCH THIRD PARTY INFRASTRUCTURES.

8. Limitation of Liability and Damages. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SYSTEM FAILURE OR NETWORK OUTAGE, WILL MOSIO OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES THAT RESULT FROM THIS AGREEMENT, EVEN IF MOSIO OR A MOSIO AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MOSIO'S OR ITS AFFILIATES' TOTAL LIABILITY TO CLIENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE) EXCEED THE NET VALUE OF ACTIONS ACTUALLY DELIVERED BY MOSIO PURSUANT TO THE PURCHASE ORDER TO WHICH THE CLAIM RELATES.

9. Ownership.

a. **Client Data.** Client shall retain all right, title and interest in and to all documents, messages, graphics, images, files, data and other information transmitted through the Mosio Service by Client and the users authorized by Client to use the Mosio Service (collectively, the "**Client Data**"), *provided, however,* that Client hereby grants to Mosio a worldwide, royalty-free, non-exclusive license to use the Client Data solely for the purposes of implementing and maintaining the Mosio Service and fulfilling its obligations hereunder. Notwithstanding the foregoing, "Client Data" does not include non-identifiable aggregate data and usage statistics compiled by Mosio in connection with Client's use of the Mosio Service.

b. **Client Logos and Designs.** Client shall retain all right, title and interest in and to all of Client's logos, promotional graphics and related marketing designs (collectively, the "**Client Art**"); *provided, however,* that Client hereby grants to Mosio a worldwide, royalty-free, non-exclusive license to use the Client Art, as well as Client's corporate and/or trade name for purposes of marketing Mosio's products and services to third parties.

c. **Mosio Platform.** Mosio shall own and retain all right, title, and interest in and to the Mosio Platform (except for any licensed content and software components included therein). Client agrees not to copy, alter, modify, or create derivative works of the Mosio Platform or otherwise use the Mosio Service in any way that violates the use restrictions contained in this Agreement. Mosio does not grant to Client any license, express or implied, to the intellectual property of Mosio or its licensors.

10. Confidentiality. "**Confidential Information**" shall mean (a) the content of the Purchase Order (subject to the license granted in Section 9(b) above); (b) any statistics or other user data relating to the Mosio Service which specifically identify Client (subject to the license granted in Section 9(b) above); and/or (c) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary." During the term of this Agreement, and for a period of two (2) years following termination, neither party will use or disclose any Confidential Information of the other party except as specifically contemplated herein. The foregoing restriction does not apply to information that: (a) has been independently developed by the receiving party without access to the other party's Confidential Information; (b) has become publicly known through no breach of this Section 12 by the receiving party; (c) has been rightfully received from a third party authorized to make such disclosure; (d) has been approved for release in writing by the disclosing party; or (e) is required to be disclosed by a competent legal or governmental authority, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to disclosure and assists in obtaining an order to protect the information from public disclosure.

11. Term; Termination. The term of this Agreement will be as set forth in the Purchase Order. Notwithstanding the foregoing, in the event of a material breach by Client, Mosio may terminate this Agreement immediately without notice or cure period. In the event of any termination, (a) Client will remain liable for any amount due under the Purchase Order (adjusted on a pro rata basis, if applicable) and such

obligation to pay shall survive any termination of this Agreement and (b) Mosio will return all Client Data and Client Art in its possession to Client.

12. Miscellaneous. This Agreement, and any rights and obligations hereunder, may not be transferred or assigned by Client, but may be assigned by Mosio without restriction. Mosio and Client are independent contractors, and neither Mosio nor Client is an agent, representative or partner of the other. Mosio and Client shall each have sole responsibility for all acts and omissions of their respective personnel. Neither party shall have any obligation for any employee-related benefits or withholding taxes applicable to the other party's personnel performing services pursuant to this Agreement. This Agreement sets forth the entire agreement between Mosio and Client, and supersedes any and all prior agreements (whether written or oral) with respect to the subject matter set forth herein. Any dispute hereunder will be negotiated in good faith between the parties within forty-five (45) days commencing upon written notice from one party to the other. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Client agrees that any action at law or in equity arising out of or relating to this Agreement will be filed only in the state or federal courts in and for San Francisco County, California, and Client hereby consents and submits to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action. This Agreement may be amended only by a writing executed by a duly authorized representative of each party. Any notices under this Agreement shall be sent to the addresses set forth in the Purchase Order (or in a separate writing) by facsimile, electronic mail or nationally recognized express delivery service and deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. If any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect.