# MOSEY WORKS, INC.
## TERMS OF SERVICE
### Last Updated: July 7, 2023

These Terms of Service (this "**Agreement**") constitute a binding agreement between you, as an individual to the extent you're accessing the Service in your individual capacity, or the organization that you represent ("**you**", "**your**" or "**Customer**") to include all individuals you authorize to access your account, and governs your use of Mosey Works, Inc.'s ("**Mosey**") Services (as defined below). By signing up to use the Services, you agree to these Terms and to Mosey's Privacy Policy, which is available at https://mosey.com/privacy-policy. Customer and Mosey are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

Mosey has developed a proprietary software tool (the "**Software**") to assist users in managing employment and tax compliance in various jurisdictions.

1. **Software and Services**.

    1.1.    Software License. Subject to the terms and conditions hereof, Mosey hereby grants to Customer a limited, non-transferable, and non-exclusive license (the "**License**") to use the Software during the term hereof solely in accordance with the terms of this Agreement and any specifications, instructions, and documentation (collectively, the "**Documentation**") provided by Mosey from time to time. The License shall be subject to the terms and conditions of one or more order forms to be executed between Mosey and Customer or other online or offline instrument (including, without limitation, any documentation generated by, or provided through, third-party services such as HubSpot) used to register for the Services (as defined below) (each, an "**Order Form**"). Customer shall use the Software and the Documentation solely for its own internal business purposes and in accordance with the limitations, if any, set forth on an Order Form.

    1.2.    Modifications to the Software. Mosey may modify and/or update the Software from time to time, so long as such modification(s) do not materially reduce the Software's performance or capabilities. Mosey shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer, any of Customer's authorized employees and personnel who are authorized to access the Software and Documentation ("**Authorized Users**"), or any other third party may incur as a result of modifications to the Software in accordance with this Section 1.2.

    1.3.    Software Support. Mosey will use commercially reasonable efforts to provide Customer ongoing support related to the Software as set forth in any Order Form ("**Software Support Services**").

    1.4.    Additional Services. During the term hereof, Mosey may agree to provide Customer with such additional services as are set forth on any Order Forms executed hereunder (together with the Software Support Services, the "**Services**"). Except as specified herein or in an executed Order Form, nothing in this Agreement or in any Order Form shall be construed as a guarantee of future Services outside the scope of any executed Order Form.

    1.5.    Mosey Mailroom. The Services may include a virtual mailroom solution (the "**Mosey Mailroom**") that allows Customer to view and download Customer's physical and/or electronic mail ("**Mail**") related to the Services via Mosey's web application by setting its mailing address or email address to a Mosey-designated virtual mailing address and/or email address, as applicable. Mosey may, in its sole discretion, use third-party virtual mailbox services, including, without limitation, Earth Class Mail, to deliver the Mosey Mailroom. Customer hereby consents and authorizes Mosey to (a) set the Mosey Mailroom as Customer's mailing address or email address, as applicable, with third parties

(including, without limitation, government entities) when using the Services to register Customer for state accounts (including, without limitation, state tax accounts) and (b) open and read Customer's Mail, and use the contents of the Mail, for the purposes of providing the Services (e.g. use a state-issued identification number in order to register Customer in such state). Customer may only receive Mail to the Mosey Mailroom related to the Services, and may not receive any Mail to the Mosey Mailroom unrelated to the Services, including, without limitation, personal mail or other business mail that is not related to the Services (as determined by Mosey in its sole discretion) (the "**Unrelated Mail**"). Customer understands and agrees that Mosey shall have no obligation to take any action with regard to any Unrelated Mail, including, without limitation, opening, reviewing, or returning to sender, as applicable. Although Customer authorizes Mosey to read and extract certain information from the Mail as provided herein, Customer understands and agrees that Customer is solely responsible for the Mail, including reviewing the contents of the mail and taking any necessary actions described therein (except where Mosey has specifically agreed to take such action as part of the Services). Although Mosey may provide Customer with support documentation on how to transfer applicable mailing and/or electronic addresses to the Mosey Mailroom or out of the Mosey Mailroom (e.g. at termination or expiration of this Agreement), Customer will be solely responsible for any failure to effectuate such transfers in or out of the Mosey Mailroom. Mosey shall not be liable for, nor have any obligation to take any action in relation to, any Mail that continues to be delivered to the Mosey Mailroom after the termination or expiration of this Agreement.

1.6.    Account Access Records. The Services may allow Customer to store usernames, passwords, security questions, and other similar records (collectively, "**Account Access Records**") required to access certain state government accounts. The Account Access Records may be generated by Mosey via the Services, or they may be manually input into the Services by Customer. Customer hereby consents and authorizes Mosey to generate the Account Access Records in connection with the Services, and to store the Account Access Records on the Services.

1.7.    Document Generation and Execution. Customer may generate and execute certain documentation electronically via the Services ("**eDocuments**"), including, without limitation, state registrations and other forms (the "**Electronic Signature Service**"). Customer acknowledges and agrees that: (i) nothing in this Agreement, nor the provision of the Electronic Signature Service, shall be construed to make Mosey a party to any eDocument processed through the Electronic Signature Service, (ii) as between Mosey and Customer, Customer has exclusive control over and responsibility for the content of any eDocument, and (iii) Customer is solely responsible for ensuring that the eDocuments are appropriate for electronic signatures, and Mosey is not responsible or liable for any such determination or use.

2.    **Financial Terms**.

2.1.    Fees. In consideration for the grant of the License and the provision of the Services, Customer shall pay to Mosey the fees set forth in the applicable Order Form (the "**Fees**") in accordance with this Section 2. Any Fees expressed in a fixed monthly amount shall be prorated for any partial month of service based on the number of days the applicable Order Form was in effect during the month and the actual number of days in such month.

2.2.    Expenses. If Customer's use of the Services incurs third-party expenses, including, without limitation, government fees (collectively, "**Third Party Fees**"), Customer agrees that Mosey may, at its discretion, either pay the Third Party Fees on Customer's behalf or pass along such Third Party Fees to be paid directly by Customer. If Mosey pays Third Party Fees on Customer's behalf, Mosey shall

invoice Customer for such Third Party Fees and such fees shall be payable in accordance with Section 2.3. Further, Mosey may, now or in the future, charge Customer a fee for the payment of such Third Party Fees.

2.3.     Invoices. Unless otherwise indicated on an Order Form, all invoices shall be due and payable within ten (10) days of the date of the invoice, and may be satisfied via an automatic charge to the credit card Customer keeps on file in Customer's online account with the Services. Customer hereby agrees that Mosey may charge any such credit card in Customer's account for any Fees incurred by the Customer.

2.4.     Method of Payment. Unless Mosey states otherwise in writing, all amounts due and payable hereunder shall be paid (a) in U.S. Dollars, and (b) by credit/debit card via an authorized Mosey payment processor or by any other method approved in writing by Mosey.

2.5.     Interest and Taxes. Interest on any late payments will accrue at the rate of 1% per month, or the highest rate permitted by applicable law, whichever is lower, from the date such amount is due until the date such amount is paid in full. Customer will be responsible for, and will pay all sales and similar taxes, and all similar fees levied upon the provision of the Software and the Services, excluding only taxes based solely on Mosey's income. Customer will indemnify and hold Mosey harmless from and against any and all such taxes and related amounts levied upon the provision of the Services and any costs associated with the collection or withholding thereof, including penalties and interest.

3.     **Customer Restrictions and Responsibilities**.

3.1     Restrictions on Use of Software. Except as expressly authorized by this Agreement, Customer may not: (a) modify, disclose, alter, translate or create derivative works of the Software or the Documentation (or any components of the foregoing); (b) sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Software or the Documentation (or any components of the foregoing); (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code, object code, or underlying structure, ideas, or algorithms of the Software, in whole or in part; (d) use the Software to store or transmit any viruses, software routines or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (e) use the Software or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable Laws; (f) interfere with or disable any features, functionality, or security controls of the Software or otherwise circumvent any protection mechanisms for the Software; (g) copy, frame or mirror any part or content of the Software; (h) build a competitive product or service, or copy any features or functions of the Software; (i) interfere with or disrupt the integrity or performance of the Software; (j) attempt to gain unauthorized access to the Software or related systems or networks; (k) disclose to any third party any performance information or analysis relating to the Software; (l) use the components of the Software or allow the transfer, transmission, export or re-export of such software components or any portion thereof in violation of any export control Laws administered by the U.S. Commerce Department, OFAC, or any other government agency; (m) remove, alter or obscure any proprietary notices in or on the Software, including any copyright notices, or (n) cause its personnel or any third party to do any of the foregoing. Customer will use its best efforts to prevent unauthorized access to, and use of, any passwords, and will immediately notify Mosey in writing of any unauthorized use that comes to Customer's attention. Notwithstanding anything to the contrary in this Agreement, Mosey may temporarily suspend or permanently revoke Customer's access to the Service if Mosey determines or reasonably suspects that Customer has or intends to violate, or has assisted others in violating or preparing to violate, any provision of this Section 3 (any such temporary suspension, a "**Service Suspension**" and any such revocation, a "**Service**

**Revocation**"). Mosey shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any third party may incur as a result of a Service Suspension or Service Revocation, and Customer shall not be entitled to any refunds of any Fees on account of any Service Suspension or Service Revocation. Any breach by Customer of any provision of this Section 3 shall be an incurable material breach and will entitle Mosey to terminate this Agreement and any Order Forms immediately pursuant to Section 10.2(a).

3.2     Customer Responsibilities. Customer shall be solely responsible for: (a) obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Software and the Services; (b) maintaining the security of Customer's infrastructure, equipment, accounts, passwords (including but not limited to administrative and user passwords) and files; (c) providing Mosey and its personnel with support and system access needed to perform the Services; and (d) all acts and omissions of Authorized Users in connection with their use of the Software and Services.

3.3     Age Policy. The Service is not intended to be used by any person under 18 years of age. By using the Service, you represent to Mosey that you are at least 18 years old and are legally able to enter into this Agreement. Mosey does not knowingly collect or solicit personally identifiable information from anyone under 18; if you are under 18, please do not use or attempt to use the Services or send any personal information about yourself to Mosey. If Mosey learns it have collected personal information from anyone under 18, Mosey will delete that information.

4.     **Confidentiality**.

4.1.     Definition. "**Confidential Information**" means all information disclosed (whether in oral, written, or other tangible or intangible form) by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") concerning or related to this Agreement or the Disclosing Party (whether before, on, or after the Effective Date) that is marked "Confidential" or "Proprietary" or with similar designation by the Disclosing Party, or that otherwise should reasonably be deemed to be confidential based on the context and nature of the information. Confidential Information includes, but is not limited to, computer programs in source and/or object code, technical drawings, algorithms, know-how, prototypes, models, samples, formulas, processes, ideas, inventions (whether patentable or not), discoveries, methods, strategies and techniques, research, development, design details and specifications, financial information, procurement and/or purchasing requirements, customer lists, information about investors, employees, business or contractual relationships, sales and merchandising data, business forecasts and marketing plans, and similar information.

4.2.     Obligations. The Receiving Party shall maintain in confidence the Confidential Information during the term of this Agreement and for a period of two (2) years thereafter, and will not use such Confidential Information except as expressly permitted in this Agreement; provided, however, that any trade secrets shall be treated confidentially for so long as such information qualifies for protection as trade secret under applicable law. The Receiving Party will use the same degree of care in protecting the Confidential Information as the Receiving Party uses to protect its own confidential and proprietary information from unauthorized use or disclosure, but in no event less than reasonable care. Confidential Information will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party's obligations under this Agreement. In addition, the Receiving Party will only disclose Confidential Information to its directors, officers, employees and/or contractors who have a need to know such Confidential Information in order to perform their duties under this Agreement, and only if such directors, officers, employees and/or contractors are bound by confidentiality obligations with respect to such Confidential Information no less restrictive than the non-disclosure obligations contained in this Section 4.2. The Parties agree that Customer Data (as defined below) shall be considered Customer's Confidential Information and the terms and conditions of this Agreement will be treated as

Confidential Information of both Parties and will not be disclosed to any third party; provided, however, that each Party may disclose the terms and conditions of this Agreement (a) to such Party's legal counsel, accountants, banks, financing sources and their advisors, (b) in connection with the enforcement of this Agreement or rights under this Agreement, or (c) in connection with an actual or proposed merger, acquisition, or similar transaction.

4.3.     Exceptions. Notwithstanding anything to the contrary herein, Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement and through no fault of the Receiving Party; (b) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party; (c) the Receiving Party can demonstrate was developed by the Receiving Party independently, and without use of or reference to, the Confidential Information; or (d) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. In addition, the Receiving Party may disclose Confidential Information that is required to be disclosed by applicable Laws or by a subpoena or order issued by a court of competent jurisdiction or other governmental authority (each, an "**Order**"), but solely on the conditions that the Receiving Party, to the extent permitted by applicable Laws: (i) gives the Disclosing Party written notice of the Order promptly after receiving it; and (ii) cooperates fully with the Disclosing Party before disclosure to provide the Disclosing Party with the opportunity to interpose any objections it may have to the disclosure of the information required by the Order and seek a protective order or other appropriate relief. In the event of any dispute between the Parties as to whether specific information is within one or more of the exceptions set forth in this Section 4.3, the Receiving Party will bear the burden of proof, by clear and convincing evidence, that such information is within the claimed exception(s).

4.4.     Remedies. The Receiving Party acknowledges that any unauthorized disclosure of Confidential Information will result in irreparable injury to the Disclosing Party, which injury could not be adequately compensated by the payment of money damages. In addition to any other legal and equitable remedies that may be available, the Disclosing Party will be entitled to seek and obtain injunctive relief against any breach or threatened breach by the Receiving Party of the confidentiality obligations hereunder, from any court of competent jurisdiction, without being required to show any actual damage or irreparable harm, prove the inadequacy of its legal remedies, or post any bond or other security.

**5.      Intellectual Property Rights.**

5.1.     Generally. Except as specified in Section 5.3, no provision of this Agreement shall be construed as an assignment or transfer of ownership of any copyrights, patents, trade secrets, trademarks, or any other intellectual property rights (collectively, "**Intellectual Property Rights**") from either Party to the other.

5.2.     Software and Services. Mosey shall own and retain all right, title and interest in and to: (a) the name, logo, trademarks, and service marks (collectively, "**Marks**") associated with its business; (b) the Software and the Documentation; (c) all improvements, enhancements and modifications to the Software and the Documentation; (d) any work products or deliverables resulting from any Services provided to Customer under this Agreement (except for any work products or deliverables that is expressly set forth in an Order Form to be owned by Customer); and (e) all Intellectual Property Rights related to any of the foregoing. Mosey reserves all rights in and to the Software and the Documentation not expressly granted to Customer in this Agreement. Except for the rights and licenses expressly granted in this Agreement, nothing in this Agreement grants to Customer or any third party, by

implication, waiver, estoppel, or otherwise, any right, title, or interest in or to the Software or the Documentation.

5.3.    Feedback. If Customer or any of its Authorized Users submits written suggestions or recommended changes to the Software or Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, the "**Feedback**"), Mosey is free to use such Feedback regardless of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Mosey, on Customer's behalf and on behalf of its Authorized Users and/or agents, all Intellectual Property Rights in and to the Feedback, for any purpose whatsoever, although Mosey is not required to use any Feedback.

5.4.    Use of Customer Marks. Customer shall own and retain all right, title and interest in and to the Marks relating to Customer's business and all Intellectual Property Rights related thereto.

6.    **Data**.

6.1.    Ownership of Customer Data. All Customer Data (as defined below), including any Customer Data input into the Software by Customer or generated through Customer's use of the Software, shall belong to Customer, provided that Mosey shall have the right to access, use, and process such Customer Data to provide the Services and the functionality of the Software to Customer during the term of this Agreement. Customer acknowledges and agrees that Customer is solely responsible for any and all Customer Data that is input into the Software by Customer, including such Customer Data's legality, reliability, and appropriateness. As used herein, "**Customer Data**" means data uploaded by Customer or resulting from Customer's use of the Software, including Personal Data, Employee Personal Data and Third Party Personal Data (as such terms are defined below).

6.2.    Anonymized Data. Customer acknowledges and agrees that Mosey may anonymize and aggregate Customer Data in a manner that it can no longer reasonably be used to identify individuals ("**Anonymized Data**"). Customer grants Mosey and its affiliates, an unlimited, perpetual, and irrevocable license to use the Anonymized Data for the purpose of improving the Software and Services, to understand and analyze trends across Mosey's customers, and for any other purpose.

6.3.    Data Processing Agreement. To the extent that Customer Data includes personal data subject to applicable data protection laws, including the EU General Data Protection Regulation and the California Consumer Privacy Act, the terms of the Data Processing Agreement available at https://mosey.com/data-privacy-agreement (the "**DPA**") shall govern the processing of such data. The Parties agree that Mosey may amend the terms of the DPA from time to time to the extent that Mosey reasonably determines that such amendment is necessary to comply with applicable data protection laws. The latest posted version of the DPA shall govern the processing of personal data subject to applicable data protection laws.

6.4.    Employee and Third Party Data. Customer acknowledges that, as part of its use of the Software, Customer may transmit their own personal data ("**Personal Data**") or the personal data of its employees or other personnel ("**Employee Personal Data**") and personal data of third parties ("**Third Party Personal Data**"). To the extent Customer transmits or inputs any Personal Data, Employee Personal Data or Third Party Personal Data through or into the Software, Customer represents and warrants that it has obtained all legally required consent to capture, collect, display, input, share and transmit such Personal Data, Employee Personal Data and Third Party Personal Data into and through the Software.

7.    **Representations, Warranties and Remedies**.

7.1.     Generally. Each Party represents and warrants that (a) it is validly existing and in good standing under the Laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement, (c) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement, and (d) this Agreement is valid, binding and enforceable against it in accordance with its terms, except to the extent limited under Laws relating to insolvency, bankruptcy, and the like.

7.2.     Mosey's Representations and Warranties. Mosey represents and warrants that (a) the Software will conform, in all material respects, to the Documentation and any other specifications set forth in the applicable Order Form, and (b) it will perform the Services, if any, in a professional and workmanlike manner.

7.3.     Customer's Representations and Warranties. Customer represents and warrants that Customer: (a) will use the Software and the Services only in compliance with this Agreement and all applicable local, state, federal and international laws and regulations, rules, orders, and ordinances (collectively, "**Laws**"); and (b) shall not infringe upon any third party's Intellectual Property Rights in its use of the Software and the Services.

7.4.     Disclaimer. THE SOFTWARE AND SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, MOSEY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SOFTWARE AND THE SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) WARRANTIES OF MERCHANTABILITY; (B) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT MOSEY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); AND (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE.

7.5.     Third-Party Services Disclaimer. As referenced above, the Services may be integrated with services provided by third parties as part of the functionality of the Services. Customer understands that Mosey does not have control over third parties and that such third parties are not agents of Mosey. CUSTOMER ACKNOWLEDGES AND AGREES THAT MOSEY MAKES NO REPRESENTATION OR WARRANTY ABOUT, DOES NOT ENDORSE, AND WILL NOT BE LIABLE FOR ANY THIRD PARTY'S PRODUCTS OR SERVICES OR THE INFORMATION PROVIDED BY THIRD PARTIES, WHETHER THROUGH THE SERVICES OR OTHERWISE. Accordingly, Mosey is not responsible for Customer's use of any third-party product or service or any harm or losses arising from or relating to Customer's use of any third-party products or services. Customer should contact the third party with any questions about their products and services. Mosey hereby disclaims and Customer hereby discharges, waives and releases Mosey and Mosey's licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to Customer's interactions with such third parties and their products and services.

7.6.     No Legal Advice. Customer acknowledges and agrees that Mosey does not provide legal or other professional advice and Customer will not rely on any information provided by Mosey, whether such information is provided through the Service or otherwise, as legal or other professional advice. Customer is solely responsible for obtaining its own professional advice.

8.    **Indemnification Obligations**.

8.1.    <u>Customer Indemnity</u>. Customer, at its sole expense, will defend Mosey and its affiliates, directors, officers, employees, and agents ("**Mosey Indemnitees**") from and against any third-party claims, suits, actions or proceedings (each a "**Claim**") and indemnify Mosey Indemnitees from any related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorneys' fees, costs, penalties, interest and disbursements) (collectively, "**Losses**") to the extent arising from or relating to (a) any negligence or willful misconduct by Customer or its affiliates, directors, officers, employees, or agents, or any other party acting on Customer's behalf (the "**Customer Indemnity Parties**"); (b) any alleged or actual breach of Customer's representations, warranties and obligations under this Agreement; (c) the use of the Software by Customer Indemnity Parties, including without limitation any claim by Customer's employees or agents related to the use of the Software by Customer Indemnity Parties; and (d) any violation of applicable Laws and Orders by Customer Indemnity Parties.

8.2.    <u>Procedures</u>. The obligations of Customer to indemnify the Mosey pursuant to Section 8 are conditioned upon the Mosey: (a) giving prompt written notice of the Claim to Customer once Mosey becomes aware of the Claim (provided that failure to provide prompt written notice to the Customer will only alleviate an Customer's obligations under Section 8 to the extent that any associated delay materially prejudices or impairs the defense of the related Claims); (b) granting Mosey the option to take sole control of the defense (including granting Mosey the right to select and use counsel of its own choosing) and settlement of the Claim (except that the Mosey's prior written approval will be required for any settlement that reasonably can be expected to require an affirmative obligation of Mosey); and (c) providing reasonable cooperation to the Mosey and, at Mosey's request and expense, assistance in the defense or settlement of the Claim.

9.    **Limitation of Liability**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, (A) NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF PROFITS OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; AND (B) EXCEPT FOR CUSTOMER'S OBLIGATION TO PAY THE FEES, A BREACH OF SECTION 4 (CONFIDENTIALITY) OR SECTION 5 (INTELLECTUAL PROPERTY RIGHTS), AND CUSTOMER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 8, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY WILL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO MOSEY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDEING THE EVENT WHICH GAVE RISE TO SUCH LIABILITY.

10.    **Term, Termination and Effect of Termination**.

10.1.    <u>Term</u>. This Agreement commences upon the Effective Date and continues in effect until the expiration of the period specified in the initial Order Form (the "**Initial Term**"). Thereafter, in the event that the Parties execute one or more subsequent Order Forms, this Agreement will automatically renew for the time period specified in such additional Order Form(s) (each, a "**Renewal Term**"). Each Order Form shall specify a term applicable to such Order Form.

10.2.    <u>Termination.</u> Notwithstanding Section 10.1, either Party may terminate this Agreement as follows: (a) if the other Party materially breaches this Agreement (including, without limitation, in the case of Customer, nonpayment of the Fees) and does not remedy such failure within thirty (30) days

after its receipt of written notice of such breach (unless the breach is of a nature that is incapable of being cured, in which case the non-breaching Party may terminate this Agreement immediately upon written notice); (b) if the other Party terminates its business activities or becomes insolvent, admits in writing to inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; (c) upon thirty (30) days' written notice to the other Party, either Party may terminate this Agreement for convenience; or (d) as otherwise expressly set forth in this Agreement or an Order Form.

10.3.    Effect of Termination. Upon any termination of this Agreement: (a) the License and any other rights granted to Customer under this Agreement with respect to the Software and the Services will immediately cease, (b) Customer shall immediately pay to Mosey all amounts due and payable up to and through the effective date of termination, (c) except for a termination by Customer pursuant to Section 10.2(a) or a termination by Mosey pursuant to Section 10.2(c), Mosey shall have no obligation to refund any prepaid Fees, and (d) the Receiving Party will, at the option of the Disclosing Party, promptly return to the Disclosing Party or destroy all Confidential Information of Disclosing Party then in the Receiving Party's possession. Upon Mosey's termination of this Agreement pursuant to this Section 10.2(c), Customer shall be entitled to a refund of Fees for any period for which Customer has already paid but will not receive Services. Notwithstanding any terms to the contrary in this Agreement, any provision of this Agreement that, by its nature and context, is intended to survive this Agreement (including, without limitation, Customer's obligation to pay any unpaid Fees and Sections 4 through 11, inclusive) will survive any termination of this Agreement.

11.    **General Provisions**.

11.1.    Entire Agreement. This Agreement, including all exhibits to this Agreement, all of which are incorporated herein by reference, sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and supersedes all prior or contemporaneous agreements, proposals, negotiations, conversations, discussions and understandings, written or oral, with respect to such subject matter and all past dealing or industry custom.

11.2.    Independent Contractors. Neither Party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other Party, and the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

11.3.    Dispute Resolution. The Parties agree to resolve any dispute, claim or controversy arising out of or relating to this Agreement according to the terms of this Section 11.3. First, the Parties agree to attempt in good faith to resolve the dispute through informal resolution. Second, if the dispute is not resolved through informal resolution, the Parties agree to participate in binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in San Francisco, California. The Parties agree that, in the event of arbitration (or in the event of a lawsuit if this arbitration clause is deemed invalid or does not apply to a given dispute) the prevailing Party shall be entitled to costs and fees (including reasonable attorneys' fees). Either Party may bring a lawsuit solely for injunctive relief without first engaging in the dispute resolution process described in this Section 11.3.In the event that the dispute resolution procedures in this Section 11.3 are found not to apply to a given claim, or in the event of a claim for injunctive relief as specified in the previous sentence, the Parties agree that any judicial proceeding will be brought in the state courts of San Francisco, California. Both Parties consent to venue and personal jurisdiction there. ALL CLAIMS MUST BE BROUGHT IN

THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS AGREED TO OTHERWISE BY THE PARTIES, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS.

11.4.  Governing Law. The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

11.5.  Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by either Party, by operation of applicable Laws or otherwise, without the prior written consent of other Party, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Notwithstanding the foregoing, either Party may assign its rights and obligations hereunder in connection with a merger, reorganization, consolidation, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will be binding upon, and will inure to the benefit of, the Parties and their respective representatives, heirs, administrators, successors and permitted assigns.

11.6.  Amendments and Waivers. Mosey reserves the right to change the terms of this Agreement from time to time, with or without notice to you. If you continue to use the Services, you consent to the new terms of the Agreement. Any changes to this Agreement will become effective on the "Effective Date" indicated above. If you continue to use the Services after such date, you consent to the new terms of the Agreement. No failure or delay (in whole or in part) on the part of a Party to exercise any right or remedy hereunder will operate as a waiver thereof or effect any other right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by applicable Laws. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.

11.7.  Notices. Any notice made pursuant to this Agreement will be in writing and will be deemed delivered on (a) the date of delivery if delivered personally, (b) five (5) calendar days (or upon written confirmed receipt) after mailing if duly deposited in registered or certified mail or express commercial carrier, or (c) one (1) calendar (or upon written confirmed receipt) after being sent by email, addressed to Customer or to Mosey, as the case may be, at the address or email address shown on the signature page of this Agreement or to such other address or email address as may be hereafter designated by either Party. Any notice to Customer pertaining to an Order Form may be made by Mosey to the contact listed by Customer for such purpose in the applicable Order Form.

11.8.  Severability. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

11.9.  Counterparts. This Agreement may be executed: (a) in two or more counterparts, each of which will be deemed an original and all of which will together constitute the same instrument; and (b) by the Parties by exchange of signature pages by mail, facsimile or email (if email, signatures in Adobe PDF or similar format).

11.10.  Force Majeure. Neither Party will be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control including, but not limited to, natural disasters (fire, storm, floods, earthquakes, etc.), a pandemic, acts of terrorism, civil disturbances, disruption of telecommunications, disruption of power or other essential services, interruption or termination of any third party services, labor disturbances, vandalism, cable cut, computer viruses or other similar occurrences, or any malicious or unlawful acts of any third party.

11.11.  Construction. This Agreement shall be deemed to be the product of all of the Parties, and no ambiguity shall be construed in favor of or against any one of the Parties.