

STANDARD TERMS AND CONDITIONS

These terms and conditions (“Standard Terms and Conditions”) apply to all Advertising Services Agreements by and between MOSAK, Inc. (“MOSAK”) and third party clients (hereinafter referred to as the “Client”) if and when they are incorporated by reference in an Advertising Services Agreement.

1. **CHANGES TO STANDARD TERMS AND CONDITIONS.** MOSAK may modify or change the Standard Terms and Conditions from time to time by providing written notice of proposed changes to Client. Upon receipt of such proposed changes or modifications, the Client shall have a period of 30 days to approve or reject such changes or modifications. Unless the Client notifies MOSAK in writing that it is rejecting the proposed changes or modifications within such 30 day period, the modifications and changes shall become binding on Client and a part of the Client’s Advertising Services Agreement.
2. **SCOPE.** These Standard Terms and Conditions are in addition to and not in lieu of the terms and conditions contained in any Advertising Services Agreement between MOSAK and the Client. In the event of an irreconcilable conflict between these Standard Terms and Conditions and the Advertising Services Agreement, the terms of the Advertising Services Agreement shall control.
3. **OWNERSHIP/LIEN.** All work product developed by MOSAK and actually used and accepted by the Client shall become the sole and exclusive property of the client upon full payment by the Client; provided, however, that MOSAK shall at all times have the right to any derivative ideas, concepts, drawings, or other intellectual property that was created by MOSAK from such original work product. Client hereby grants MOSAK a lien against any and all work product prepared by MOSAK in order to secure full payment by the Client. Client agrees that any work product that is proposed by MOSAK but not actually accepted and used by Client shall remain the property of the MOSAK. The Client agrees to return to MOSAK any copy, artwork, plates or other physical embodiment of the work product upon request of MOSAK.
4. **CONFIDENTIALITY.**
 - a. During this Agreement, and for a period of one (1) year thereafter, the parties will protect and treat as confidential any information disclosed by one party to the other, including but not limited to business and marketing information, market research, methods, pricing and client and vendor lists (“Confidential Information”), unless such Confidential Information: (i) is in the public domain at the time of its disclosure; (ii) was already in its possession of the receiving party and not subject to an existing agreement of confidence between the parties; (iii) is received from a third party, other than a

current or former agent or representative of the disclosing party without restriction and without breach of this Agreement or any other agreement; (iv) is independently developed by the receiving party as evidenced by its written records; or (iv) is disclosed pursuant to a valid order of a court or regulatory agency or other governmental body or any political subdivision thereof.

b. The Confidential Information shall be maintained as confidential and disclosed or made accessible only to those employees, consultants, representatives or agents of the receiving party (the "Representatives") who have a need to know such Confidential Information in relation to the performance of this Agreement. The receiving party will advise its Representatives that the Confidential Information is confidential and that by receiving such information such Representatives are agreeing to be bound by this Agreement and not to use such information for any purpose other than described herein. In any event, the receiving party shall be responsible for any improper use of the Confidential Information by its Representatives.

c. The parties acknowledge that the restrictions contained in this Section 4 are reasonable and necessary to protect their legitimate interests and that any violation of these restrictions will cause irreparable damage to the other party. Each party agrees that money damages are not an adequate remedy for any such violation and that the other party will be entitled to seek injunctive relief against each violation.

d. With regard to database work, including but not limited to direct mail, MOSAK agrees to destroy any list provided by the Client at the end of the project. Under no circumstance should MOSAK ever use or disclose database information without the written consent of Client.

5. **INDEMNIFICATION.**

a. The Client shall defend, indemnify, and hold harmless MOSAK and all of its directors, officers, employees and agents from and against all actions, proceedings, costs, claims, losses, liabilities, damages or expenses (including attorneys' fees) suffered or incurred by MOSAK arising from the actions or representations of the Client, its directors, officers, employees, or agents, including, but not limited to, the Client's supply of materials and information to MOSAK, including copy and layouts approved by Advertiser and information substantiating advertising claims, and all trademarks, trade names, logos and other intellectual property of the Client and its affiliates approved by the Client for MOSAK's use in its services hereunder. The Client shall further defend, indemnify, and hold harmless MOSAK and all its directors, officers, employees, and agents from and against all actions, proceedings, costs, claims, losses, liabilities, damages or expenses (including attorneys' fees) to the extent arising out any bodily injury or property damage arising from any advertising for, or otherwise relating to, the Client's products

or services.

b. MOSAK shall defend, indemnify, and hold harmless the Client and all of its directors, officers, employees and from and agents against all actions, proceedings, costs, claims, losses, liabilities, damages or expenses (including attorneys' fees) suffered or incurred by the Client as a direct and sole result of the gross negligence or willful misconduct of MOSAK, its directors, officers, employees, or agents in their performance under this Agreement.

c. In the event a consumer, competitor, governmental or regulatory proceeding is initiated against either party as a result of advertising produced and/or published under this Agreement, the other party will assist and cooperate with such party in defending such action. Any costs or expenses incurred by MOSAK as a result of said defense shall be the responsibility of the Client.

6. **SAFEGUARDING OF PROPERTY.** MOSAK shall take commercially reasonable precautions to safeguard any of the Client's property entrusted to its custody or control, but in the absence of negligence on MOSAK's part or willful disregard by MOSAK for the Client's property rights, MOSAK shall not be responsible for any loss, damage, or destruction of any such property. The Client shall retain copies of any submissions made to MOSAK.

7. **INDEPENDENT CONTRACTOR RELATIONSHIP.** The parties shall act at all times herein as independent contractors and nothing contained herein shall be construed to create the relationship of employer or employee between the Client and MOSAK.

8. **NOTICE.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery, if personally delivered, sent by a nationally recognized overnight courier, or facsimile with confirmation copy sent the same day by first class U.S. mail (postage prepaid); or (ii) upon receipt thereof, if mailed by registered or certified U.S. mail, postage prepaid, return receipt requested. All notices shall be addressed to each party at the following address:

Agency:	MOSAK, Inc. 2802 Flintrock Trace, Ste 102 Austin, TX 78738 Attention: Monique Threadgill
Client:	At the billing address of Client

or to such other address as either party shall have furnished to the other party hereto in the manner prescribed by this Section 8.

9. **ENTIRE AGREEMENT.** Except as otherwise provided herein, this Agreement constitutes the entire agreement of the parties with respect to the

subject matter hereof, and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to the subject matter hereof and thereof.

10. **WAIVER**. No delay or omission by either party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.
11. **SEVERABILITY**. If and to the extent any provision (or any part thereof) of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement shall not be affected thereby. If any provisions of this Agreement are held by a court of competent jurisdiction to conflict with any federal, state or local law, such provisions are hereby declared to be of such force and effect as is permissible in such jurisdiction.
12. **HEADINGS**. Headings used herein are for the convenient reference of the parties and are not intended to limit, expand or modify in any manner the express terms of this Agreement.
13. **ASSIGNMENT**. The rights and obligations of the parties hereunder shall not be assigned, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to and be binding upon the parties hereto and their respective representatives, successors and assigns.
14. **MODIFICATIONS**. No modification or amendment to this Agreement shall be effective unless in writing and signed by both parties.
15. **ENFORCEMENT**. If MOSAK shall prevail in any action at law or in equity to enforce the provisions of this Agreement against the Client, MOSAK shall be entitled to reimbursement by the Client of MOSAK's costs and expenses of enforcement, including reasonable attorneys' fees.
16. **EXECUTION**. This Agreement may be executed in any number of counterparts, including facsimile counterparts, each of which shall be deemed an original.
17. **GOVERNING LAW**. This Agreement shall be construed and governed by and under the substantive laws of the State of Texas, without regard to its conflicts of laws principles. Any action, suit, or other legal proceeding which is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be commenced and prosecuted only in a state or federal court located in Austin, Texas. The Client consents to the jurisdiction of such a court and will not contest jurisdiction on the basis of forum non conveniens or any other basis. The Client agrees that process in any action or

proceeding referred to in this Section 17 may be served on the Client anywhere.

18. **PAYMENTS.** All invoices shall be paid within 30 days of the effective date of such invoice. Invoices shall be effective 3 days after the date of such invoice. Failure to timely pay an invoice shall result in a finance charge equal to the lesser of: (i) 2.0% per month or portion of a month that such invoice is past due; or (ii) the maximum permissible interest rate allowed under Texas law for commercial transactions. Returned checks, insufficient funds and/or payments that are otherwise not honored by the maker's bank shall result in a fee of \$50.00 to compensate MOSAK for the expenses incurred in handling such payment. Failure to charge a fee or interest on any invoice shall under no circumstances prohibit MOSAK from later asserting such fee or interest charge. Client agrees to pay all collection costs, including third party collection fees, attorney's fees and any other fees incurred by MOSAK.

19. **LIMITATION ON LIABILITY.** Under no circumstances shall MOSAK be liable for lost profits, consequential damages or special damages. MOSAK's maximum liability under this Agreement shall be the fee or fees paid for such services.