

Motio Software End User License Agreement (EULA)

IMPORTANT – THIS SOFTWARE IS LICENSED, NOT SOLD, AND AVAILABLE FOR USE ONLY UNDER THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”).

YOU MAY NOT INSTALL OR USE THE SOFTWARE UNTIL AFTER YOU HAVE READ AND ACCEPTED ALL OF THE EULA TERMS BELOW. INSTALLATION AND/OR USE OF THE SOFTWARE CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS.

TERMS AND CONDITIONS

1. DEFINITIONS

For purposes of this EULA, the following terms shall have the following meanings:

Documentation shall mean the user’s manuals and/or other documentation provided to END USER along with the Software, whether in tangible or electronic form.

Executable Code shall mean the fully compiled version of a software program that can be executed by a computer and used by an end-user without further compilation.

Intellectual Property Rights shall mean all worldwide copyrights, trademarks, service marks, trade secrets, patents, moral rights, contract rights, and other proprietary rights.

License Scope shall mean the scope of the licenses granted to each of the different types of the Software pursuant to the Exhibits Attached hereto, including any limitations regarding number of servers, number of users, etc. The scopes of the licenses to these different types of the Software may differ, and the term License Scope shall be used to collectively refer to the different scopes of all the licenses to the Software.

Service Bureau includes but is not limited to application service providers, hosting companies and Internet portals that would use the Software for the benefit of third party to third party transactions.

Software shall mean the software products owned by Motio, Inc. (“MOTIO”) that are identified in each of the Exhibits attached hereto and shall include the Documentation for the Software.

Source Code shall mean the human-readable version of a software program that can be

compiled into Executable Code.

2. LICENSE GRANT

Subject to the terms and conditions of this Software EULA and the payment of all applicable license fees, MOTIO grants to END USER, and only END USER, a personal, non-exclusive, non-transferable, non-sublicensable, Executable Code only license to use the Software and Documentation according to the License Scope, as identified in the this EULA and the attached Exhibits, solely for END USER’s own internal operations, utilizing END USER’s data.

3. RESTRICTIONS OF USE

END USER acknowledges that the Software and the Software’s code sequence, structure, organization and Source Code constitute valuable trade secrets of MOTIO. Accordingly, END USER agrees not to:

- (a) modify, adapt, alter, translate, or create a derivative work of the Software unless END USER has requested, in writing, permission from MOTIO and such permission has been granted to END USER in writing from MOTIO;
- (b) sell, distribute, transfer, sublicense, lease, rent, or loan the Software to any third party;
- (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Software’s Source Code;
- (d) use the Software in connection with the operations of a Service Bureau, in a time-sharing environment, as a subscription service, as part of a Software as a Service (SAAS) model, or for the benefit of any third party; or
- (e) use the Software except as expressly allowed under Section 2 (License Grant).

These restrictions are not intended to restrict END USER’S ability to implement the provided interfaces but rather intended solely to prohibit improper uses, alterations or

Motio Software End User License Agreement (EULA)

modifications, or other changes of the Software.

4. COPIES

END USER shall be permitted to make a reasonable number of copies of the Software solely for backup, archival and testing purposes. END USER shall be permitted to make a reasonable number of copies of the Documentation and distribute such copies to END USER's internal user community. If a serial number, password, license key or other security device is provided to END USER for use with the Software, END USER may not share or transfer such security device with or to any other user of the Software or any other third party. Any other use of the Software by any third party, except as provided in this EULA, is strictly forbidden and is a breach of this EULA.

5. DELIVERY AND ACCEPTANCE

The Software and Documentation will be delivered to END USER in accordance with the terms and conditions of the Exhibits attached hereto. The Software shall be deemed accepted upon the date of delivery ("Delivery Date").

6. MAINTENANCE AND SUPPORT

Maintenance of the Software (i.e. technical support and updates), if any, as well as payment therefore, will be provided in accordance with the terms and conditions of the Exhibits attached hereto.

7. WARRANTIES

(a) For the period of thirty (30) days, beginning on the Delivery Date, MOTIO warrants the Software, when used as permitted under this EULA and in accordance with the instructions in the Documentation, will operate in substantial conformance with the published specifications set forth in the Documentation. Additional warranty term may be available to purchase for certain types of the Software, on a case-by-case basis.

(b) MOTIO DOES NOT WARRANT THAT END

USER'S USE OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED. MOTIO WILL, AT ITS OWN EXPENSE AND AS ITS SOLE OBLIGATION AND END USER'S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY, USE COMMERCIALY REASONABLE EFFORTS, WHICH MAY INCLUDE ADVISING END USER ELECTRONICALLY OR TELEPHONICALLY HOW TO MAKE CORRECTIONS, TO CORRECT ANY REPRODUCIBLE ERRORS IN THE SOFTWARE THAT END USER REPORTS TO MOTIO IN WRITING DURING THE WARRANTY PERIOD. ANY SUCH ERROR CORRECTION PROVIDED TO END USER WILL NOT EXTEND THE ORIGINAL SOFTWARE WARRANTY PERIOD. IF THE ERROR CANNOT BE CORRECTED, MOTIO'S ENTIRE LIABILITY AND END USER'S EXCLUSIVE FURTHER REMEDY FOR BREACH OF THE WARRANTY SET FORTH IN THIS SECTION 7 SHALL BE, AT MOTIO'S OPTION, EITHER (I) REPAIR OF THE SOFTWARE OR (II) REPLACEMENT OF THE SOFTWARE. REPLACED SOFTWARE IS WARRANTED FOR THIRTY (30) DAYS FROM INSTALLATION.

(c) END USER'S FAILURE TO IMPLEMENT UPDATES AND IMPROVEMENTS IN A TIMELY MANNER, WITHOUT MOTIO'S PRIOR WRITTEN CONSENT, WILL VOID SUCH WARRANTY.

(d) EXCEPT AS EXPRESSLY PROVIDED IN THIS EULA, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND MOTIO MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. MOTIO DOES NOT WARRANT THAT THE SOFTWARE WILL MEET END USER'S REQUIREMENTS, OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. END USER SHALL HAVE SOLE RESPONSIBILITY FOR THE ACCURACY AND ADEQUACY OF THE INFORMATION FURNISHED FOR PROCESSING AND ANY USE MADE BY END USER OF THE DATA OUTPUT BY THE SOFTWARE AND ANY RELIANCE THEREON.

Motio Software End User License Agreement (EULA)

8. TERM AND TERMINATION

(a) **Term.** The term of this EULA will begin upon the Delivery Date and shall be perpetual unless terminated earlier in accordance with the terms hereof.

(b) **Termination.** Either RESELLER or MOTIO, on one hand, or END USER, on the other, may terminate this EULA upon the occurrence of a material breach by the other, which material breach has not been cured within thirty (30) days after receipt of written notice thereof.

(c) **Effects of Termination.** Upon termination or expiration of this EULA for any reason, any amounts owed to RESELLER or MOTIO before such termination or expiration will be immediately due and payable. All licensed rights granted in this EULA will immediately cease to exist. RESELLER's and MOTIO's obligation, if any, to provide maintenance and support shall immediately cease. END USER must promptly discontinue all use of the Software, erase all copies of the Software from END USER's computers, and return to RESELLER or destroy all copies of the Software and Documentation in END USER's possession or control, and certify in writing to RESELLER and MOTIO that END USER has fully complied with these requirements.

9. SURVIVAL

Section 1 (Definitions), Section 3 (Restrictions of Use), Section 7 (Warranties), Section 8 (Term and Termination), Section 9 (Survival), Section 10 (Confidentiality), Section 11 (Proprietary Rights), Section 12 (Infringement Claims), Section 13 (Limitation of Liability), and Section 14 (General) will survive expiration or termination of this EULA for any reason.

10. CONFIDENTIALITY

(a) Except as expressly allowed under this EULA, END USER will not use or disclose any Software, Documentation, or any idea, algorithm, Source Code, or trade secrets of MOTIO in the Software or Documentation, except to the extent that END USER can document that any such item:

- (i) becomes generally available for use and disclosure by the public without any license or charge;
- (ii) has been otherwise disclosed by MOTIO or a third party without breach of a confidentiality obligation;
- (iii) was independently developed by END USER without reference to the Software or Documentation; or
- (iv) is required to be disclosed by END USER by law or any governmental authority, provided that END USER shall notify MOTIO as soon as reasonably possible of any such compelled disclosure and give MOTIO the opportunity to defend against such disclosure or obtain a protective order in connection therewith.

(b) END USER shall use commercially reasonable efforts, which shall be no less stringent than those efforts that END USER uses to protect END USER's own software or other similar proprietary property, to prevent the Software or Documentation from being used by any employee, agent, consultant or other person in any manner that would violate this EULA.

(c) END USER further agrees to use commercially reasonable efforts to assist RESELLER and MOTIO in identifying and preventing any use or disclosure of any object code or Source Code of the Software, any Documentation, or any of the ideas, algorithms, source code, or trade secrets contained therein.

(d) Without limiting the foregoing obligation, END USER shall advise RESELLER and MOTIO immediately in the event that END USER learns or has reason to believe that any person who has had access to the Software or Documentation or any portion thereof, as a result of this EULA, has violated or intends to violate the terms of this EULA.

(e) END USER acknowledges and agrees that there is no adequate remedy at law for a breach of this section, that such a breach would irreparably harm MOTIO, and that MOTIO shall, in the event of such a breach, be entitled to equitable relief, including, without

Motio Software End User License Agreement (EULA)

limitation, injunctions, without the posting of any bond, in addition to any other remedies.

11. PROPRIETARY RIGHTS

END USER has no ownership rights in the Software or Documentation. The Software and Documentation, and all Intellectual Property Rights associated therewith, are and will remain at all times the sole and exclusive property of MOTIO. END USER has no right, title, or interest in or to the Software or Document, or any Intellectual Property Rights associated therewith, except as expressly set forth in this EULA. Upon MOTIO's request, END USER agrees, at MOTIO's expense, to take such actions as MOTIO may reasonably request to perfect MOTIO's ownership in the Software.

This EULA does not grant END USER any rights in the trademarks or service marks of MOTIO, all of which remain the exclusive property of MOTIO. END USER may not alter or remove trademarks, service marks, or other markings from the Software or Documentation, or their associated packaging.

The Software and Documentation contain material that is protected by patent laws, copyright laws, and international treaty provisions. Accordingly, END USER may not make copies of the same, except as expressly allowed under this EULA. END USER shall maintain at all times all patent and/or copyright notices provided on the Software and Documentation, and their associated packaging. END USER shall ensure that any permitted copy of the Software and Documentation is produced only for END USER's own benefit and that it is clearly marked on the copy that such copy is subject to copyright and confidentiality. END USER shall further ensure that a written list is maintained of the number of copies of the Software and the place of storage of each copy. Copies of the Software and Documentation constitute MOTIO's property. All terms and conditions of this EULA shall also apply to such copies.

12. THIRD PARTY INFRINGEMENT CLAIMS

(a) MOTIO shall pay those costs and direct damages finally awarded against END USER in connection with any claim by a third party that the Software directly infringes any copyright or misappropriates any trade secret recognized as such under applicable law (or those costs and damages agreed to by MOTIO in a written monetary settlement) and the reasonable costs of defense incurred by END USER in connection therewith, including reasonable attorneys' fees and court costs, provided that:

- (i) END USER provides MOTIO with prompt written notice of any such action or claim;
- (ii) END USER will permit MOTIO to assume and control the defense and settlement of any such action or claim, at MOTIO's expense;
- (iii) END USER will not prejudice the defense of the action or claim nor will END USER make any admission as to liability nor compromise or agree to any settlement of any such action or claim without the prior written consent of MOTIO; and
- (iv) END USER will provide MOTIO with such assistance, documents, authority, and information as MOTIO may reasonably require in relation to the action or claim and defense or settlement thereof.

(b) Notwithstanding the foregoing, MOTIO will have no obligation under this Section 12 or otherwise with respect to any infringement claim based upon:

- (i) any use of the Software not in accordance with this EULA or for purposes not intended by RESELLER or MOTIO;
- (ii) any use of the Software in combination with other products, equipment, software, or data which END USER is not authorized in writing to use in conjunction with the Software;
- (iii) any use of any release of the Software other than the most current release made available to END USER;
- (iv) any modification of the Software by any person other than MOTIO;

Motio Software End User License Agreement (EULA)

- (v) END USER's continued alleged infringing activity after being informed of modifications that would have avoided the alleged infringement; or
- (vi) any combination of END USER's use of the Software with any other activities of END USER or others.

(c) If the Software becomes, or in MOTIO's opinion is likely to become, the subject of an infringement claim, MOTIO may, at its option and expense, either:

- (i) procure for END USER the right to continue using the Software;
- (ii) replace or modify the Software so that it becomes non-infringing; or
- (iii) accept return of the Software and give END USER a pro rata refund of license fees paid by END USER less a reasonable allowance for the period of time END USER had used the Software.

(d) END USER shall defend, indemnify and hold MOTIO harmless from and against all claims arising from the activities described in any of the foregoing clauses (b)(i)-(b)(vi). THIS SECTION 12 STATES MOTIO'S ENTIRE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

13. LIMITATION OF LIABILITY

IN NO EVENT WILL MOTIO BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS OR ANY DAMAGES ARISING FROM ANY DATA LOSS OR CORRUPTION OF ANY KIND, ARISING FROM OR RELATING TO THIS EULA INCLUDING THE USE OF THE SOFTWARE PROVIDED HEREUNDER. MOTIO'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS EULA AND THE SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY END USER FOR THE LICENSE TO WHICH A SPECIFIC CLAIM APPLIES. END USER ACKNOWLEDGES THAT THE LICENSE FEE REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS EULA AND THAT MOTIO WOULD NOT ENTER INTO THIS EULA WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

14. GENERAL

(a) **Assignments.** END USER may not assign or transfer, by operation of law or otherwise, any of END USER's rights under this EULA to any third party without MOTIO's prior written consent, such consent not to be unreasonably withheld. Any attempted assignment or transfer in violation of the foregoing will be void.

(b) **Export.** END USER agrees not to export the Software outside the United States without MOTIO's prior written consent, which consent will not be unreasonably withheld. END USER further agrees to comply in all respects with the applicable export laws and regulations of the United States and not distribute or transfer the Software in contravention of those laws and regulations. END USER will defend, indemnify and hold harmless MOTIO from and against any violation of such laws or regulations by END USER or any of END USER's agents, officers, directors, or employees.

(c) **Taxes.** END USER will be responsible for payment of, and shall not withhold from fees owed to RESELLER or MOTIO (including but not limited to license fees and maintenance fees, if applicable), all applicable sales, use, ad valorem, and excise taxes; duties; and assessments based on END USER's use or possession of the Software. END USER shall hold RESELLER and MOTIO harmless from all claims and liability arising from END USER's failure to pay such taxes.

(d) **Inspections.** During the term of this EULA and for a period of three (3) years after the termination or expiration hereof, END USER will (i) maintain records sufficient to verify the amounts owing to MOTIO or RESELLER hereunder; and (ii) permit MOTIO or its representatives to review END USER's relevant records and inspect END USER's facilities to ensure compliance with this EULA. MOTIO will give END USER at least two (2) business days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with END USER's normal operations.

(e) **Notices.** All notices or other communications to RESELLER shall be addressed as set forth on the Cover Page hereto. All notices or other communications to

Motio Software End User License Agreement (EULA)

MOTIO shall be addressed to: Motio, Inc., 7161 Bishop Road, Suite 200 Plano, TX 75024, USA, Attn: President. All notices, consents and approvals under this EULA must be delivered in writing by courier, by fax, or by certified or registered mail, (postage prepaid and return receipt requested), and will be effective upon the earlier of receipt or when delivery is refused.

(f) **Governing Law and Venue.** This EULA will be governed by the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this EULA.

(g) **Remedies.** END USER acknowledges that the Software contains valuable trade secrets and proprietary information of MOTIO, that any actual or threatened breach of Section 3 (Restrictions of Use) or Section 10 (Confidentiality) will constitute immediate, irreparable harm to MOTIO for which monetary damages would be an inadequate remedy, that MOTIO shall, in the event of such a breach, be entitled to equitable relief, including injunctive relief, without the posting of any bond, in addition to any other remedies. If any legal action is brought to enforce this EULA, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

(h) **Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(i) **Severability.** If any provision of this EULA is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, END USER agrees that Section 13 (Limitation of Liability) will remain in effect notwithstanding the unenforceability of any provision in Section 7 (Warranties).

(j) **Confidentiality of EULA; Announcements.** Neither party shall disclose any terms of this EULA to anyone other than its attorneys, accountants and other professional

advisors except as required by law. MOTIO shall be allowed to use END USER's name on its customer lists, so long as such lists are not available to the general public, and disclose the same to its present and potential customers after execution of this EULA. "Potential customer" in this section represents a specific customer that is contemplating MOTIO's products and services. For any other use of END USER's name, MOTIO shall obtain written permission from END USER.

(k) **Third Party Beneficiary.** As the owner of the Intellectual Property Rights and the confidential information for which END USER has obligations under this EULA (including but not limited to the Software and Documentation), MOTIO is an intended third-party beneficiary to this EULA. Upon END USER's acceptance of this EULA, MOTIO will have the right (and will be deemed to have accepted the right) to enforce this EULA against END USER as a third-party beneficiary of this EULA.

(l) **Construction.** The headings of Sections of the EULA are for convenience and are not to be used in interpreting the EULA. As used in the EULA the word "including" means "including but not limited to."

(m) **Counterparts.** This EULA may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

(n) **Entire Agreement.** This EULA constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral; provided that any non-disclosure agreement or confidentiality agreement between RESELLER (or MOTIO) and END USER shall survive the execution of this EULA. This EULA may be amended only by a written document signed by duly authorized representatives of both parties. If END USER issues or responds to a purchase order, or similar document, in connection with this EULA, any preprinted terms and conditions appearing thereon shall not apply to or become part of this EULA regardless of any statement to the contrary contained therein.