

# CONDITIONS FOR SERVICE

## Mosaic NetworX, LLC – Conditions for Service – Statement 2.0:

The following Conditions for Service – Statement 2.0 are **effective January 1, 2013** and specify the conditions for service in addition to those terms set forth on Customer's Service Order for telecommunications services which has been accepted by Mosaic NetworX, LLC ("**Mosaic**"). **Mosaic reserves the right to modify these Conditions for Service at any time, and such modifications will apply to all Service Orders accepted by Mosaic on or after the effective date such conditions are stated on this web site.**

**All terms used in this statement of Conditions for Service will have the same meaning as set forth in the Service Order Terms & Conditions attached or otherwise referenced in the Service Order between Mosaic and Customer relevant to the Services in question.**

## Facilities and Equipment

Customer has sole responsibility for installation, testing and operation of the facilities, services and equipment ("**Customer Facilities**") other than as specifically provided by Mosaic as part of the Services described in a Service Order. In no event will untimely installation or non-operation of Customer Facilities (e.g., local access, including cross connects, when Customer is responsible therefor) relieve Customer of its obligation to pay charges for the Services. Mosaic has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by authorized representatives of Customer and Mosaic. If Customer Facilities or Customer's end user equipment is incompatible with the Services, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

**"Mosaic Equipment"** means the telecommunications equipment, cable and facilities installed, operated or controlled by Mosaic or third-party telecommunications facilities arranged by Mosaic on Mosaic's side of the point of demarcation. **"Point of Demarcation"** means the interface designated by Customer (Customer provided DSX jack or other mutually acceptable piece of equipment) between Mosaic's and Customer's equipment or facilities. For interconnection of DS-1 & DS-3 signals at an interexchange carrier location, the point of demarcation will be at an industry standard digital cross-connect panel (DSX-1 & DSX-3) administered by Mosaic or by Mosaic's designated third party service provider. For interconnection of OC-n signals at an interexchange carrier location, the point of demarcation will be at an industry standard fiber distribution panel administered by Mosaic or by Mosaic's designated third party service provider. Mosaic will own and/or control all Mosaic Equipment, and Customer will not claim such equipment as Customer's personal property regardless of where located or attached. Mosaic may upgrade, replace or remove Mosaic Equipment, regardless of where located, so long as the Services continue to perform in accordance with the Technical Standards. Customer may not alter, move or disconnect Mosaic Equipment and is responsible for any damage to, or loss of, Mosaic Equipment caused by Customer's breach of this provision or as the result of Customer's or its end user's negligence or willful misconduct.

## Access to Equipment

Mosaic may require access to Customer's premises to install and maintain the Services and Mosaic Equipment. Upon request, Customer will provide Mosaic with a contact and/or help desk number that can be reached at all times.

Customer also must provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for installation of and maintaining Mosaic Equipment at Customer's premises.

## **Letter of Authorization / Carrier Facility Assignment**

If Customer intends to connect the Services to facilities that it does not own, it must provide Mosaic with and maintain (for the Service Commitment Period relevant to the Services in question) a current letter of authorization and carrier facility assignment, as applicable.

## **Work Performed at Request of Customer**

If Customer requests Mosaic to perform work associated with Customer's side of the point of demarcation, such as, demarcation extensions, preparation of Customer's premises, testing of Customer's equipment or facilities, inside wiring and/or maintenance work on Customer's equipment, facilities or wiring, and Mosaic agrees to perform such work, Customer shall be responsible for paying Mosaic a time and materials charge associated with performance of the work.

## **Testing**

Mosaic will notify Customer when the Service has been successfully installed and is available for Customer's use as of the Start of Service date. Unless Customer notifies Mosaic within twenty-four (24) hours of the Start of Service date that the Service is not operational, the Service Commitment Period will commence. If following Start of Service Customer believes the Services are subject to Defect and Customer notifies Mosaic and reasonably identifies the problem, Mosaic will work with Customer to remedy the Defect. If Mosaic reasonably determines that the Defect is due to Mosaic's Network or Mosaic Equipment or third-party telecommunications facilities arranged by Mosaic on Mosaic's side of the Point of Demarcation, then Customer will be credited on a pro rata basis for the monthly recurring charges associated with the Services from the date Customer notified Mosaic of the Defect through the date that the Service is made operational. If Mosaic reasonably determines that the Defect is not being caused by Mosaic's Network or Mosaic Equipment on Mosaic's side of the Point of Demarcation, Customer will not be entitled to any pro rata credits for the Services in question, and will be subject to time and/or materials charges incurred by Mosaic for testing services performed. Mosaic is not responsible for testing failures resulting from problems with Customer Facilities.

## **Scheduled and Emergency Maintenance**

**Scheduled Maintenance.** Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. Mosaic will endeavor to provide Customer with at least three (3) business days notice before performing service-affecting Scheduled Maintenance unless a shorter notice period is required under the circumstances.

**Emergency Maintenance.** If Mosaic has to perform service-affecting maintenance outside of the Scheduled Maintenance window set forth above, then Mosaic will provide as much prior notice to Customer as is practicable under the circumstances.

## Use of Service

Customer's use of the Services is subject to the condition that the services, products, materials, data, and information used by Customer in connection with the Services as well as Customer's use and its end-users' use of Services do not violate applicable laws or regulations. In the event of any non-compliance or reasonably anticipated non-compliance with the foregoing, Mosaic will have the right (with reasonable notice under the circumstances) to suspend any related Services if deemed necessary by Mosaic to prevent use of the Services without complying to the foregoing condition or harm to Mosaic and/or its supplier facilities.

Customer is solely responsible for billing its end users and providing such end-users with customer service. Customer may resell the Service(s) to its own customers or end-users. Customer shall take full responsibility for management of its end-users. Customer shall be solely liable for amounts it cannot collect from the end-users. In addition, Customer is solely responsible for collecting from its end-users any payment of any applicable federal, state, local, or other governmental sales, use, excise, public utility, or other taxes, regulatory fees, and charges now in force or enacted in the future, or additional costs imposed, that arise from or are a result of the Customer's provision of services to its End Users (**collectively "Customer Costs of Service"**). Customer agrees to indemnify and hold Mosaic, Mosaic's suppliers used in the provision of Service, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims (including claims for Customer Costs of Service), liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any acts or omissions of Customer's end-users and Customer's provision of services to its end-users.

Mosaic exercises no control over the content of the information transmitted, received or posted utilizing the Services. Provision of Services is not and will not create a partnership or joint venture between the parties or result in a joint communications service offering to third parties.

## Credit Conditions

**Credit.** Customer's execution of a Service Order signifies Customer's acceptance of Mosaic's initial and continuing credit approval procedures and policies, including a cash security deposit from Customer equal to at least one (1) month of the reasonably determinable monthly recurring charges for the Services. Mosaic reserves the right to withhold initiation or full implementation of any or all Services pending Mosaic's initial satisfactory credit review and approval thereof, which may be conditioned upon terms specified by Mosaic. Mosaic further reserves the right to modify its requirements, if any, with respect to any security or other assurance provided by Customer for payments due hereunder in light of Customer's actual usage when compared to projected usage levels upon which any prior security or assurance requirement was based.

**Creditworthiness.** If at any time there is a material adverse change in Customer's creditworthiness, as determined by Mosaic in its sole discretion, then in addition to any other remedies available to Mosaic, Mosaic may elect, in its sole discretion, to exercise one or more of the following remedies: (i) delay or withhold the Start of Service for Services; (ii) suspend Services pursuant to a Suspension Notice; (iii) decline to accept a Service Order or other requests from Customer to provide Services; and/or (iv) condition its provision of Services or acceptance of a Service Order on Customer's assurance of payment consistent with the Credit provisions above.

If Services are suspended pursuant to a Suspension Notice, Mosaic shall re-institute the applicable Services to Customer only when Customer provides Mosaic with satisfactory assurance of Customer's ability to pay for such

Services (i.e., a deposit, letter of credit or other means) and Customer's advance payment of the cost of re-instituting such Services.

Either Customer or Mosaic may terminate the Services if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.

## Proprietary Information

The final terms and conditions under which Services are provided (including information set forth in Service Orders), communications between the parties regarding the Services and information required between the parties (e.g. credit information) for the Services to be provided, as well as such information relevant to any other agreement between the parties (**collectively "Confidential Information"**), are confidential as between Customer and Mosaic. Neither party shall disclose Confidential Information of the other (unless subject to discovery or disclosure pursuant to legal process or regulatory mandate) to any other person other than the directors, officers, and employees of a party or a party's advisors or bona fide prospective purchasers who have specifically agreed in writing to protect such Confidential Information. The obligations of Customer and Mosaic pursuant to the foregoing provisions will be effective as of the date of any Service Order accepted by Mosaic (**"Confidentiality Effective Date"**) and remain in full force and effect for a period which will be the longer of (i) one (1) year following the Confidentiality Effective Date, or (ii) one (1) year from the termination or expiration of all Services provided by Mosaic to Customer.

## Dispute Resolution

If Customer reasonably disputes any portion of a Mosaic invoice for Services, Customer must pay the undisputed portion of the invoice and submit written notice of the claim (with sufficient detail of the nature of the claim, the amount and invoices in dispute and information necessary to identify the affected Services for the disputed amount. All invoice disputes will be submitted by Customer to the following Mosaic email address:

billing@mosaicnetworx.com (**"Dispute Resolution Address"**). All disputes must be submitted to Mosaic via the Dispute Resolution Address within sixty (60) days from the date of the invoice for those DID Services. Customer waives the right to dispute any charges not disputed within such sixty (60) day period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in Customer's Service Order for telecommunications services Subsection.

Except for claims by Mosaic for payment, in the event of any disputes, controversies, or differences arising out of the provision of Services to Customer by Mosaic (**"Disputes"**), the parties shall use their best efforts to settle the Dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the Dispute cannot be resolved through negotiation, then at the request of either party in writing (**the "Notice of Dispute"**), the Dispute shall be submitted by either party to arbitration before the American Arbitration Association (**"AAA"**) in accordance with its Commercial Arbitration Rules then in effect, utilizing a single arbitrator unless the parties agree otherwise. If the parties are unable to agree on an arbitrator within thirty (30) days of the filing of a demand for arbitration, the arbitrator shall be selected pursuant to the rules and procedures of the AAA. The arbitration will take place in San Francisco, California and will apply the governing law of the Service Order Terms and Conditions. The decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The arbitrator will state the

reasoning for the decision(s), including findings of fact and law, and specify a prevailing party. The parties shall share the cost of the arbitrator and the arbitration proceedings, but the prevailing party in the arbitration shall be entitled to have its own arbitration costs and expenses (including reasonable attorneys' fees) paid by the other party as part of final judgment.

## **Mosaic NetworX, LLC – Conditions for Service – Statement 1.0:**

The following Conditions for Service – Statement 1.0 are effective January 1, 2009 and specify the conditions for service in addition to those terms set forth on Customer's Service Order for telecommunications services which has been accepted by Mosaic Networx, LLC ("Mosaic"). Mosaic reserves the right to modify these Conditions for Service at any time, and such modifications will apply to all Service Orders accepted by Mosaic on or after the effective date such conditions are stated on this web site.

All terms used in this statement of Conditions for Service will have the same meaning as set forth in the Service Order Terms & Conditions attached or otherwise referenced in the Service Order between Mosaic and Customer relevant to the Services in question.

### **Facilities and Equipment**

Customer has sole responsibility for installation, testing and operation of the facilities, services and equipment ("Customer Facilities") other than as specifically provided by Mosaic as part of the Services described in a Service Order. In no event will untimely installation or non-operation of Customer Facilities (e.g., local access, including cross connects, when Customer is responsible therefor) relieve Customer of its obligation to pay charges for the Services.

Mosaic has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by authorized representatives of Customer and Mosaic. If Customer Facilities or Customer's end user equipment is incompatible with the Services, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

"Mosaic Equipment" means the telecommunications equipment, cable and facilities installed, operated or controlled by Mosaic or third-party telecommunications facilities arranged by Mosaic on Mosaic's side of the point of demarcation.

"Point of Demarcation" means the interface designated by Customer (Customer provided DSX jack or other mutually acceptable piece of equipment) between Mosaic's and Customer's equipment or facilities. For interconnection of DS-1 & DS-3 signals at an interexchange carrier location, the point of demarcation will be at an industry standard digital cross-connect panel (DSX-1 & DSX-3) administered by Mosaic or by Mosaic's designated third party service provider.

For interconnection of OC-n signals at an interexchange carrier location, the point of demarcation will be at an industry standard fiber distribution panel administered by Mosaic or by Mosaic's designated third party service provider. Mosaic will own and/or control all Mosaic Equipment, and Customer will not claim such equipment as Customer's personal property regardless of where located or attached. Mosaic may upgrade, replace or remove Mosaic Equipment, regardless of where located, so long as the Services continue to perform in accordance with the Technical Standards. Customer may not alter, move or disconnect Mosaic Equipment and is responsible for any damage to, or loss of, Mosaic Equipment caused by Customer's breach of this provision or as the result of Customer's or its end user's negligence or willful misconduct.

### **Access to Equipment**

Mosaic may require access to Customer's premises to install and maintain the Services and Mosaic Equipment. Upon

request, Customer will provide Mosaic with a contact and/or help desk number that can be reached at all times.

Customer also must provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for installation of and maintaining Mosaic Equipment at Customer's premises.

## **Letter of Authorization / Carrier Facility Assignment**

If Customer intends to connect the Services to facilities that it does not own, it must provide Mosaic with and maintain (for the Service Commitment Period relevant to the Services in question) a current letter of authorization and carrier facility assignment, as applicable.

## **Work Performed at Request of Customer**

If Customer requests Mosaic perform work associated with Customer's side of the point of demarcation, such as, demarcation extensions, preparation of Customer's premises, testing of Customer's equipment or facilities, inside wiring and/or maintenance work on Customer's equipment, facilities or wiring, and Mosaic agrees to perform such work, Customer shall be responsible for paying Mosaic a time and materials charge associated with performance of the work.

## **Testing**

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## **Scheduled and Emergency Maintenance**

**Scheduled Maintenance.** Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. Mosaic will endeavor to provide Customer with at least three (3) business days notice before performing service-affecting Scheduled Maintenance unless a shorter notice period is required under the circumstances.

**Emergency Maintenance.** If Mosaic has to perform service-affecting maintenance outside of the Scheduled Maintenance window set forth above, then Mosaic will provide as much prior notice to Customer as is practicable under the circumstances.

## **Use of Service**

Customer's use of the Services is subject to the condition that the services, products, materials, data, and information used by Customer in connection with the Services as well as Customer's use and its end-users' use of Services do not violate applicable laws or regulations. In the event of any non-compliance or reasonably anticipated non-compliance with the foregoing, Mosaic will have the right (with reasonable notice under the circumstances) to suspend any related Services if deemed necessary by Mosaic to prevent use of the Services without complying to the foregoing condition or harm to Mosaic and/or its supplier facilities.

Customer is solely responsible for billing its end users and providing such end-users with customer service.

Mosaic exercises no control over the content of the information transmitted, received or posted utilizing the Services.

Provision of Services is not and will not create a partnership or joint venture between the parties or result in a joint communications service offering to third parties.

## **Credit Conditions**

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If Services are suspended pursuant to a Suspension Notice, Mosaic shall re-institute the applicable Services to Customer only when Customer provides Mosaic with satisfactory assurance of Customer's ability to pay for such Services (i.e., a deposit, letter of credit or other means) and Customer's advance payment of the cost of re-instituting such Services.

Either Customer or Mosaic may terminate the Services if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.

## **Proprietary Information**

The final terms and conditions under which Services are provided (including information set forth in Service Orders),

communications between the parties regarding the Services and information required between the parties (e.g. credit information) for the Services to be provided, as well as such information relevant to any other agreement between the parties (collectively "Confidential Information"), are confidential as between Customer and Mosaic. Neither party shall disclose Confidential Information of the other (unless subject to discovery or disclosure pursuant to legal process or regulatory mandate) to any other person other than the directors, officers, and employees of a party or a party's advisors or bona fide prospective purchasers who have specifically agreed in writing to protect such Confidential Information. The obligations of Customer and Mosaic pursuant to the foregoing provisions will be effective as of the date of any Service Order accepted by Mosaic ("Confidentiality Effective Date") and remain in full force and effect for a period which will be the longer of (i) one (1) year following the Confidentiality Effective Date, or (ii) one (1) year from the termination or expiration of all Services provided by Mosaic to Customer.

## **Dispute Resolution**

Except for claims by Mosaic for payment, in the event of any disputes, controversies, or differences arising out of the provision of Services to Customer by Mosaic ("Disputes"), the parties shall use their best efforts to settle the Dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the Dispute cannot be resolved through negotiation, then at the request of either party in writing (the "Notice of Dispute"), the Dispute shall be submitted by either party to arbitration before the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules then in effect, utilizing a single arbitrator unless the parties agree otherwise. If the parties are unable to agree on an arbitrator within thirty (30) days of the filing of a demand for arbitration, the arbitrator shall be selected pursuant to the rules and procedures of the AAA. The arbitration will take place in San Francisco, California and will apply the governing law of the Service Order Terms and Conditions. The decision of the arbitrator will be final and binding and judgment on the award may be entered in any court of competent jurisdiction. The arbitrator will state the reasoning for the decision(s), including findings of fact and law, and specify a prevailing party. The parties shall share the cost of the arbitrator and the arbitration proceedings, but the prevailing party in the arbitration shall be entitled to have its own arbitration costs and expenses (including reasonable attorneys fees) paid by the other party as part of final judgment.