

**On-Line  
DATA SERVICE ADDENDUM  
2.0**

This On-Line Data Service Addendum 1.0 (“**Data Service Addendum**”) is subject to the On-Line Master Services Agreement 1.0 (the “**MSA**”) between Customer and Mosaic. The terms and conditions set forth herein will govern Mosaic’s provision and Customer’s purchase of Data Service (defined below). The date Mosaic accepts a Data Service Order from Customer will be deemed the “**Effective Date**” of the Agreement between the parties with respect to Data Service provided hereunder.

The MSA, this Data Service Addendum and Data Service Orders submitted by Customer and accepted by Mosaic, may collectively be referred to herein as the “**Agreement.**” Except as expressly set forth herein, the Data Service described in this Data Service Addendum will be provided in accordance with the provisions of the MSA. Terms used in this Addendum unless otherwise defined in this Data Service Addendum shall have the same meaning as terms used in the MSA. In the event of any conflict between the terms of the MSA and this Data Service Addendum, this Data Service Addendum will control.

In consideration of the mutual promises and covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. DATA SERVICE / APPLICABILITY.**

Data Service shall include, but not be limited to, **data network technologies** for private line or metropolitan private line / local access services (e.g., point-to-point / ethernet), **wireless data** (e.g., Fixed Wireless or Wireless/Mobility), **internet protocol** (e.g., Non-Dedicated Broadband [aka, Shared Broadband] or Dedicated Broadband) and **ancillary services** (including, but not limited to, use of firewalls or IP addresses) associated therewith (hereafter referred to as “**Data Service, Data Services or Service(s)**”). **Fixed Wireless / Wireless Mobility and Non-Dedicated Broadband Data Services will be deemed "as is" and "as available" with respect to the Technical Standards for Data Service. Further, Non-Dedicated / Shared Broadband / Fixed Wireless Data Service may be subject to additional use restrictions as set forth in the Mosaic AUP.** This Data Service Addendum is applicable only where Customer purchases Data Service from Mosaic. If the Data Service herein becomes subject to a tariff, the tariff will control.

**2. DATA SERVICE ORDERS.**

**(A) Data Service Order Information.** All Data Service provided under this Data Service Addendum will be described in individual service orders as to type, quantity, price (monthly recurring and non-recurring charges MRR/NRR), service location(s), Service Commitment Period (Term) and other information relevant to Mosaic providing Data Service (“**Data Service Order(s)**”). Data Service requested by Customer will be set forth on **(i)** Mosaic’s forms in effect from time to time or Customer’s forms accepted in writing by Mosaic as hereinafter provided, or **(ii)** through Mosaic designated Electronic Order Processing aka the Mosaic OSS Portal. All Data Service Orders accepted by Mosaic and the Data Service described therein will be subject to the terms and conditions of this Service Addendum. Mosaic will be under no obligation to provide Service unless it has accepted a Data Service Order and established a firm order commitment date with Customer (“**FOC Date**”) for when Data Service will be delivered. Unless both parties specifically and conspicuously agree in writing, any inconsistent or additional terms or conditions set forth in any Data Service Order shall be deemed solely for the convenience of the parties.

**(B) Service Commitment Period; Start of Service; Extensions.** The Service Commitment Period for the Data Service which may also be described as “Term” in a Data Service Order shall commence on the later of the FOC Date or when the Data Service in question is delivered in accordance with the Technical Standards set forth in Section 7 (“**Start of Service**”). Unless terminated by either Customer or Mosaic upon at least ninety (90) days’ notice prior to the expiration of the Service Commitment Period then applicable to the Service in question and without executing a successor Service Order, the Service Commitment Period for such Service will be automatically extended for additional equal periods (Terms).

### 3. CANCELLATION / DISCONNECTION OF SERVICE.

**(A) Cancellation of Data Service Prior Start of Service.** After a Data Service Order is accepted by Mosaic, and prior to Start of Service, Customer may cancel all or a portion of such Data Service Order. In such event, Customer shall pay Mosaic any order cancellation charges assessed against Mosaic by any third party (e.g., Interexchange Carrier or Local Exchange Carrier) delivering service ordered by Mosaic in support of the Data Service(s) in question, plus a cancellation charge equal to one (1) month of the recurring charge for the affected Data Service.

**(B) Disconnection of Services.** Following Start of Service and prior to expiration of the Service Commitment Period relevant to the Data Service(s) in question, Customer may disconnect any of the Data Service(s) if Customer provides written notification thereof to Mosaic at least thirty (30) days in advance of the effective date of disconnection. In such event or in the event Data Service is terminated by Mosaic in accordance with Section 5(C), Customer shall pay Mosaic all charges for such Data Service(s) provided through the effective date of disconnection, plus a disconnection charge equal to one hundred percent (100%) of the monthly recurring charges for the affected Data Service(s) for the unexpired portion of the Service Commitment Period applicable thereto.

**(C) Liquidation.** The parties agree that Mosaic's damages in the event of canceled/disconnected Data Service(s) shall be difficult if not impossible to ascertain. Therefore, the provision for the charges in this Section 3 in the event of cancellation/disconnection of Data Service(s) by Customer is intended to establish reasonable and anticipated charges and expenses (liquidated damages) that will be incurred by Mosaic and payable by Customer, and is not intended as a penalty.

### 4. CHARGES AND PAYMENT TERMS.

**(A) Payments and Invoicing.** Customer shall pay all fees and charges due according to applicable Data Service Order and this Data Service Addendum. All fees and charges are set forth in US dollars and are exclusive for any "Additional Charges" (defined below). Unless otherwise specified by the parties in writing, Mosaic will invoice Customer for Data Service via email to the Customer web address set forth on the initial Data Service Order hereunder. Unless otherwise agreed by Mosaic in writing, Customer shall only maintain one (1) email address for invoicing of Service hereunder.

Customer shall make payment to Mosaic in US currency at the address indicated on Mosaic invoices to Customer.

**(B) Due Date.** Subject to any terms required by Mosaic pursuant to the Credit provisions of this Agreement, following Start of Service, payment for **(i)** all prorated monthly recurring fees and charges, installation and other non-recurring charges; and **(ii)** monthly recurring fees and charges for the first full month Data Service(s) to be provided plus one (1) month in advance shall be due and payable on or before thirty (30) days after the date of Mosaic's invoice to Customer ("**First Invoice Due Date**"). Thereafter, the monthly recurring fees and for such Services charges (including applicable Additional Charges and previously unbilled non-recurring charges) will be invoiced one (1) month in advance of the month in which such Data Service is to be provided and will be due and payable on or before thirty (30) days after the date of Mosaic's invoice to Customer ("**Future Invoice Due Date**"). The First Invoice Due Date and the Future Invoice Due Date shall be collectively referred to as the "**Due Date.**" Usage charges, if any, associated with the Service (e.g., burstable data / excess wireless plan usage) will be invoiced in arrears and will be payable in the same manner as non-recurring charges. In the event Customer fails to pay Mosaic's invoice in full on or before the Due Date, Customer shall also pay a late fee in the amount of the lesser of one and one half percent (1.5%) of the unpaid balance per month or the maximum lawful rate under applicable state law.

**(C) Additional Charges / Exemption.** All fees and charges are exclusive of any applicable federal, state or local use, excise, gross receipts, sales and privilege taxes, duties, fees (including franchise fees or fees incurred from third party providers for maintenance issues resolved or identified on Customer Facilities) or similar liabilities (other than general income or property taxes), whether charged to or against Mosaic or Customer because of the Data Service(s) or maintenance issues resolved or identified on Customer Facilities ("**Additional Charges**"). Customer shall pay Additional Charges by the Due Date in addition to all other fees and charges provided for herein. To the extent Customer claims an exemption from Additional

Charges (e.g., sales tax) Customer must provide a valid exemption certificate to Mosaic. Customer will remain liable for all Additional Charges (e.g., sales tax) for all periods prior to Customer providing Mosaic with an appropriate exemption certificate.

**(D) Disputed Invoices.** If Customer reasonably disputes any portion of a Mosaic invoice for Data Service, 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 Data Service for the disputed amount. All invoice disputes will be submitted by Customer to the following Mosaic email address: [billing@mosaicnetworx.com](mailto: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 Data 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 Subsection 4(B).

**(E) Failure to Pay / Suspension of Service.** In the event all undisputed fees and charges due pursuant to Mosaic's invoices for Data Service are not paid in full by the Due Date, Mosaic may, after giving Customer at least five (5) days prior notice and opportunity to pay such charges within such 5-day period ("**Suspension Notice**"), suspend all or any portion of the applicable Services to Customer until such time (designated by Mosaic in its Suspension Notice) as Customer has paid in full all undisputed fees and charges then due to Mosaic, including any late fees and Additional Charges. 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. If Customer fails to make the required payment by the date set forth in the Suspension Notice, Customer will be deemed to have canceled / disconnected (as the case may be) all Services under this Data Service Addendum as of the date set forth in the Suspension Notice.

## **5. TERM / TERMINATION.**

**(A) Term.** This Data Service Addendum will be effective as of the Data Service Addendum Effective Date first set forth above and shall continue in full force and effect for a period which will be the longer of **(i)** one (1) year following the Effective Date, or **(ii)** until the termination or expiration of all Data Service provided to Customer by Mosaic pursuant to this Data Service Addendum.

**(B) Termination of Defective Service.** Customer will have the right to terminate a specific Data Service Order and the Services described therein without liability for the disconnection charge provided in Section 3(B) if Mosaic fails to cure a Defect associated with such Service within 30 days after receipt of written notice of the same from Customer.

**(C) Termination of Data Service Addendum.** A party will have the right to terminate this Data Service Addendum if the other party breaches any material term or condition of the Agreement (including without limitation, Mosaic's Acceptable Use Policy) and fails to cure such breach as specifically provided for with respect to such breach (e.g., Customer's cure period for payment) or if no specific time period is provided for, then within thirty (30) days after receipt of written notice of the breach. A party may terminate this Data Service Addendum 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.

**(D) Effect of Termination of Data Service Addendum.** Upon the effective date of termination of this Data Service Addendum pursuant to Section 5(C): **(i)** Mosaic may immediately cease providing Data Service hereunder and **(ii)** any and all payment obligations of Customer hereunder, including, without limitation any applicable charges for Data Services provided to the effective date of termination as well as a disconnection charge determined in accordance with Section 3(B) above (if Customer is the breaching party), will become due and payable in accordance with Section 4.

**(E) Survival of Terms.** In the event of any termination of this Data Service Addendum, the terms and provisions contained herein that by their sense and context are intended to survive the performance thereof by the parties hereto shall so survive the termination of hereof, including without limitation the provisions for indemnification and the making of any payments by Customer and due hereunder.

## **6. RESELL AND CUSTOMER END USERS.**

Subject to resell restrictions that may apply to certain Data Services as provided in the Mosaic AUP, Customer may resell the Data 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 Data 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.

## **7. LIMITED WARRANTY.**

**Subject to the Limitation of Liability and Disclaimer of Warranties set for in the MSA,** Mosaic warrants that Data Service will be provided in accordance with prevailing telecommunications common carrier industry standards, governmental regulations and sound business practices (**hereafter the "Technical Standards"**). **MOSAIC DOES NOT WARRANT THAT ANY OF THE DATA SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.** Mosaic will use reasonable efforts under the circumstances to remedy any errors, delays or interruption in the Data Service (**"Defect[s]"**). Customer shall have the right to terminate defective Data Service(s) in accordance with Section 5(B) and receive a prorata credit against any recurring (non-usage based) charges invoiced for the affected Service and for the period it was defective as its exclusive remedies for Defects in Service hereunder. The parties acknowledge and agree that the exclusivity of remedies and limitations of liability set forth in this Agreement form an essential basis of this Agreement and have been relied on by both parties, and that absent such exclusivity of remedies and limitations of liability, the terms and conditions of this Agreement and the charges applicable to the Services would be substantially different.

## **8. PRIVACY.**

The provision of Data Service may utilize the public Internet and third party networks. Mosaic and its service providers shall not be liable for any lack of privacy which may be experienced by Customer or its end-users with regard to the Data Service(s) provided hereunder. Customer shall be solely responsible for any liabilities arising from Customer's or its end-users' lack of privacy.