

**On-Line  
MASTER SERVICES AGREEMENT  
2.0**

The following terms and conditions comprise this On-Line Master Services Agreement 2.0 ("**MSA**") between you (**hereafter "you" or "Customer"**) and Mosaic NetworX, LLC, a Delaware limited liability company (**hereafter "Mosaic"**), applicable to services provided by Mosaic (**the "Service" or "Services"**) to Customer. Please read this MSA carefully since it contains important contract rights and obligations between you and Mosaic, as well as important limitations on those rights. If you would like to contact Mosaic, write to:

Mosaic NetworX, LLC.  
700 Larkspur Landing Circle, Suite 214  
Larkspur, CA 94939  
Attn: Contract Management  
E-mail Notices: [contracts@mosaicnetworx.com](mailto:contracts@mosaicnetworx.com)

BY SUBSCRIBING TO A SERVICE ORDER, ACTIVATING, USING, OR PAYING FOR THE SERVICES, YOU AGREE TO THE TERMS AND CONDITIONS IN THIS MSA ("**EFFECTIVE DATE**") INCLUDING THOSE SET FORTH IN ON-LINE SERVICE ADDENDUMS (<http://mosaicnetworx.com/schedule-policies-tos>) PERTINENT TO THE SERVICE(S) IN QUESTION AND AS SPECIFIED IN THE SERVICE ORDER(S) FOR THE SERVICE IN QUESTION - ALL OF WHICH ARE INCORPORATED HEREIN BY REFERENCE.

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**WHEREAS**, Mosaic is in the business of providing telecommunication and related services; and,

**WHEREAS**, Customer desires to engage Mosaic to provide telecommunications services in accordance with the terms of this MSA and any On-Line Service Addendums applicable to the Service(s) in question "**Service Addendum(s)**" (**individually and collectively the "Agreement"**);

**NOW THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. SERVICES PROVIDED.**

Upon Mosaic's acceptance of Customer's written request ("**Service Order**") for Service described in a Service Addendum, Mosaic agrees to provide and Customer agrees (in addition to the penultimate language above) to accept and pay for the Services in accordance with the provisions of this Agreement and the applicable Service Order. Mosaic will be under no obligation to provide Services unless it has made a written acceptance of a Service Order from Customer. For purposes of the forgoing provisions, a "written acceptance" shall be deemed to include tangible written Service Orders executed by the parties, email confirmations, and/or Service Orders accepted via a Mosaic on-line operational support system.

**2. CUSTOMER RESPONSIBILITIES.**

**(A) Customer Facilities.** 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 as of the Start of Service or upon cancellation / disconnection of Services.

**(B) Customer's End Users.** Customer is solely responsible for billing its end users and providing such end-users with customer service.

**(C) Use of Service.** Customer acknowledges that 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.

**(D) Acceptable Use Policy.** Mosaic does not allow the use of the Services for unlawful purposes; the purpose of SPAM or MASS-MAILING; or, other uses in violation of the Mosaic Acceptable Use Policy (“AUP”) posted on Mosaic’s web site <http://mosaicnetworkx.com/schedule-policies-tos> .

### 3. WARRANTIES.

**(A) Warranties by Customer.** Customer represents and warrants that services, products, materials, data, and information used by Customer in connection with this Agreement as well as Customer’s and its end-users’, if any, use of Services do not violate applicable laws or regulations. In the event of any breach or reasonably anticipated breach of the foregoing warranty, 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 in breach of the forgoing warranty or harm to Mosaic and/or its supplier facilities.

**(B) Warranties by Mosaic.** Mosaic represents and warrants that the Services 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 the Services 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 Services (**“Defect[s]”**). EXCEPT AS EXPRESSLY STATED HEREIN, MOSAIC MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF ANY OF THE SERVICES PROVIDED UNDER THIS AGREEMENT.

**(C) Warranties of Both Parties.** To the extent when required by applicable law, each party acknowledges that it is responsible for and warrants to the other that it has obtained and will maintain, at its own cost, all licenses, approvals and other authorizations necessary or appropriate for the provision and/or (when applicable) the resale of Services, and shall respectively provide, use or resell the Services, as the case may be, in compliance with applicable laws, rules and regulations.

### 4. CREDIT; CREDITWORTHINESS.

**(A) Credit.** Customer’s execution of this MSA signifies Customer’s acceptance of Mosaic’s initial and continuing credit approval procedures and policies, including, but not limited to credit provisions, if any, set forth in any Service Addendum as-well-as a cash security deposit from Customer if requested by Mosaic in an amount determined in the sole discretion of Mosaic equal to at least one (1) month of the reasonably determinable monthly 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.

**(B) 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 which shall be a deposit in accordance Section 4(A).

### 5. TERM; TERMINATION.

**(A) Term.** This Agreement will be effective as of the Effective Date 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 Services provided to Customer by Mosaic pursuant to the Agreement.

**(B) Termination of MSA.** Mosaic will have the right to terminate this MSA if Customer breaches any material term or condition of the Agreement or the AUP and fails to cure such breach as specifically provided for with respect to such breach or if no specific time period is provided for, then within thirty (30) days after receipt of written notice of the breach. Either party may terminate this MSA 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 sixty (60) days of filing.

**(C) Effect of Termination of MSA.** Upon the effective date of termination of the MSA pursuant to Section 5(B): **(i)** Mosaic may immediately cease providing Services and terminate the Service Addendum(s) hereto and **(ii)** any and all payment obligations of Customer under the Agreement will become due and payable in accordance with the terms of the Agreement.

**(D) Survival of Terms.** In the event of any termination of this MSA, 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 hereof, including without limitation the provisions for indemnification, proprietary information and the making of any payments by Customer due under the terms of the Agreement.

## **6. LIMITED LIABILITY; GENERAL INDEMNITY.**

**(A) Limited Liability.** **SUBJECT TO THE PROVISIONS OF SECTION 6(B), IN NO EVENT WILL EITHER PARTY HERETO NOR ANY THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE SERVICES BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE, LOSS OF CUSTOMERS OR CLIENTS, LOSS OF GOODWILL OR LOSS OF PROFITS ARISING IN ANY MANNER FROM THIS MSA AND THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER.**

**(B) General Indemnity.** In the event parties other than Customer (e.g., Customer's End Users) shall have use of the Services through Customer, then Customer agrees to indemnify, defend and hold Mosaic, its affiliated companies and any third party provider or operator of facilities employed in provision of the Services harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which those parties may assert arising out of or relating to any Defect in the Services or Mosaic's provision or non-provision of Services under this Agreement. Customer shall also indemnify, defend and hold harmless Mosaic and its affiliated companies from any and all claims, losses, damages, liabilities, judgments, or settlements, including reasonable attorney's fees, costs, and other expenses incurred by Mosaic related to or in connection with Customer's or Customer's end-user(s)' use of the Services or Customer's acts or omissions under this Agreement.

## **7. FORCE MAJEURE.**

**(A) Causes Beyond Control.** If either party's performance of this Agreement or any obligation hereunder (excluding Customer's obligation to pay for Services rendered by Mosaic in accordance with the applicable Service Addendum) is prevented, restricted or interfered with by causes beyond its reasonable control, including but not limited to acts of God, fire, explosion, vandalism, cable cut by a third party, storm or other similar occurrence, any law, order, regulation, direction, action of any government, or any civil or military authority, or by national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, then the affected party shall be excused from such performance on a day to day basis to the extent of such prevention, restriction or interference. Both parties shall use commercially reasonable efforts, under the circumstances, to mitigate or eliminate any adverse effect such event of force majeure may have on its ability to perform its obligations hereunder.

**(B) Period of Non-Performance.** If Mosaic's failure of performance shall be for thirty (30) days or less, then the Services affected thereby shall continue as is but, upon receipt of a Customer request directed to Customer's designated Customer Service Representative, a pro rata credit of any recurring (non-usage based) charges for the affected Services shall be made. If either party's failure of performance is for more than thirty (30) days, then said pro rata credit (if applicable) shall continue, and the affected Services may be canceled by either Customer or Mosaic on thirty (30) days notice without liability other than Customer's liability for payment for Services provided in accordance with the Technical Standards applicable thereto prior to cancellation.

## **8. NOTICES.**

Any notice, approval, request, authorization, direction or other communication under this Agreement, other than those specifically provided for, shall be given in writing and shall be deemed to have been delivered and given for all purposes upon receipt only when sent via e-mail as specifically provided for **or** mailed first class mail, return-receipt-requested, or by nationally/internationally recognized overnight courier service, duly addressed and with proper postage, to the address set forth below or such other address as may be provided by the other party in writing for the purpose of receiving such notices. All non-electronic notices required under this Agreement shall be addressed to the street addresses set forth below **and** copies thereof sent to the e-mail address of the party specified below. Either party may change its specified address(es) by giving notice of such change in accordance herewith.

**If to Mosaic:**

Mosaic NetworX, LLC.  
700 Larkspur Landing Circle, Suite 214

Larkspur, CA 94939  
Attn: Contract Management  
Phone: 415 - 877-1460  
E-mail Notices: contracts@mosaicnetworx.com

**If to Customer:**

At the Billing Address specified in the relevant Service Order or such other Address specifically set forth in a Service Order as a Notice Address for Customer.

**9. CONFIDENTIALITY AND USE OF NAME.**

(A) The provisions of this Section 9 will be effective as of the Effective Date and remain in full force and effect for a period which will be the longer of (i) one (1) year following the Effective Date, or (ii) one (1) year from the termination or expiration of all Services provided to Customer by Mosaic hereunder.

(B) The parties hereby acknowledge that in the course of the business relationship between them, either party may acquire information regarding the other or its affiliates, its business activities and operations or those of its customers and suppliers and its trade secrets, including, without limitation, the terms of this Agreement to the extent such terms are not posted for publication on the world wide web (i.e., any non-published terms executing in writing between the parties regarding the Service), their respective customer lists, prospective customers, rates, network configuration, traffic volume, financial information, computer software, service, processes, methods, knowledge, research, development or other information of a confidential and proprietary nature (**hereinafter "Confidential Information"**). Each party shall hold the Confidential Information in strict confidence and shall not reveal the Confidential Information, or any portion thereof. The foregoing obligations regarding disclosure of Confidential Information shall not apply, however, to any part of the Confidential Information which: (a) was already in the public domain or which becomes so through no fault of the receiving party; (b) was already known or independently developed by the receiving party; (c) is expressly approved for release by written authorization of the disclosing party; or (d) is disclosed pursuant to any judicial or governmental request, requirement or order provided, however, that the receiving party only makes disclosure to the extent required and prior to making such disclosure, takes all reasonable steps to provide prompt and sufficient notice to the disclosing party, so that the disclosing party may contest such request, requirement or order.

(C) Each party agrees not to use the name, service marks or trademarks of the other party, or of any of its affiliated companies, in any advertising, publicity releases or sales presentations, without the other party's written consent and not to take any actions which will in any manner compromise the registered trademarks and/or service marks of the other party or its affiliates.

(D) The parties acknowledge that the breach or attempted breach by a party (including its agents or employees) of the provisions of this Section 9, will cause irreparable damage to the other party and the parties agree that the party seeking to enforce its rights under this Section 9 shall be entitled, in addition to all other remedies, to seek injunctive relief in any court of competent jurisdiction to enjoin and restrain the disclosure of Confidential Information and/or unauthorized use or a party's name, and any others so engaged, from violating any of the provisions of this Section 9, without having to prove actual damages or post a bond.

**10. GOVERNING LAW; DISPUTE RESOLUTION; FORUM; FEES-COSTS IN COLLECTION / ENFORCEMENT.**

(A) **Governing Law.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of California (except that body of law controlling conflicts of law).

(B) **Dispute Resolution.** Except for claims by Mosaic for payment, in the event of any disputes, controversies, or differences arising out of the Agreement or any breach thereof, including the interpretation or enforcement of statutory law / regulation pertaining to the Agreement ("**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 this Agreement. 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. The parties agree that the arbitrator shall only have the power and authority to make awards and issue orders as expressly permitted herein and shall not, in any event, make any award that provides for punitive or exemplary damages.

**(C) Legal Forum.** Any legal action or proceeding with respect to the Agreement may be brought in the courts of California in and for the County of Marin or the United States of America for the Northern District of California. By execution of this MSA Customer and Mosaic submit to such jurisdiction, hereby expressly waiving whatever rights may correspond to either of them by reason of their present or future domicile, and each agrees to service by U.S. Mail at their Notice Address effective upon the earlier of actual receipt or seven (7) days following the date of posting.

**(D) Fees - Costs In Collection / Enforcement.** In any action for collection for payment due hereunder from Customer, Mosaic shall also have a claim to be awarded by the court in which the collection action is filed for its reasonable attorney's fees and costs incurred in such collection. If the prevailing party in an arbitration pursuant to Section 10(B) must obtain judicial enforcement of the arbitrator's award, then that party's reasonable attorney's fees and costs in obtaining such judicial enforcement shall be an additional claim to be awarded by the court in which the enforcement action is filed.

#### **11. EXCLUSIVE REMEDIES.**

Except as otherwise specifically provided for herein, the remedies set forth in this Agreement comprise the exclusive remedies available to either party at law or in equity.

#### **12. SUCCESSORS AND ASSIGNMENT.**

Customer will not assign this Agreement or any rights hereunder, without the prior written consent of Mosaic, which consent shall not be unreasonably denied or withheld, except that upon prior notice to Mosaic, Customer may assign or transfer this Agreement, in whole or in part, to an entity controlling, under common control with or controlled by Customer, without the consent of Mosaic. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors or assigns.

#### **13. INDEPENDENT PARTIES AND NON-EXCLUSIVITY.**

**(A) Independent Parties.** It is expressly understood that the parties are acting hereunder as independent contractors, and that under no circumstances shall any of the employees of one party be deemed to be employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act on behalf of the other in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other party, except to the extent and for the purposes expressly provided for herein.

**(B) Non-exclusive Dealing.** Nothing in this Agreement shall prevent either party from entering into similar arrangements with any other person or entity.

#### **14. NO WAIVER.**

No term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Unless otherwise agreed by the parties in writing, consent for waiver of or excuse for a breach or default by either party, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach or default.

#### **15. SEVERABILITY.**

In the event any provision of this Agreement is held by a court of other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of this Agreement will remain in full force and effect.

#### **16. GENERAL.**

Mosaic and Customer are from time to time collectively referred to herein as "**parties**" and individually as a "**party**". Facsimile signatures on Service Orders shall be considered original signatures for the purposes of execution and enforcement of the rights and obligations described herein. Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement. Words having well known technical or trade meanings shall be so construed and all listing shall not be taken as exclusive, but shall include other items, whether

similar or dissimilar to those listed, as the context reasonably requires. No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.

**17. ENTIRE AGREEMENT; ON-LINE SERVICE RENEWAL TERMS.**

This Agreement consists of **(i)** all the terms and conditions contained herein, and **(ii)** all documents incorporated herein specifically by reference including any On-Line Service Addendum(s) and Service Orders accepted in accordance with the terms hereof. This Agreement constitutes the complete and exclusive statement of the understandings between the parties and supersedes all prior and contemporaneous discussions, proposals and agreements (oral or written) between the parties relating to the subject matter hereof. This Agreement may be changed only by written agreement signed by both Customer and Mosaic. Notwithstanding the forgoing, if the Service Commitment Period (Term) of Service (as described in the On-Line Service Addendum / Service Order relevant to the Service in question) is automatically extended / renewed, Mosaic may, in its sole discretion, elect to accept such extensions / renewals subject to its then current On-Line published terms, **and** by Customer's continued use of such Service, Customer acknowledges and agrees to Mosaic's right to make such election and the On-Line terms of Service then applicable to the Service in question.