



# Customer Agreement

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MOSAIC WELCOMES YOU TO ITS INTERNET NETWORK. BY ACCEPTING SOFTWARE AND CONNECTING TO THE NETWORK, YOU ARE AGREEING TO THE FOLLOWING TERMS AND CONDITIONS. MOSAIC AGREES TO PROVIDE SERVICES TO YOU, SUBJECT TO THE FOLLOWING CUSTOMER AGREEMENT ("AGREEMENT"). THIS IS A LEGAL AGREEMENT BETWEEN YOU AND MOSAIC FOR USE OF THE MOSAIC PORTAL AND INTERNET ACCESS SERVICE AND RELATED FEATURES (THE "SERVICE"). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT REGISTER FOR OR USE THE SERVICE. BY USING THE SERVICE, YOU SIGNIFY YOUR AGREEMENT WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE RETURN THE CLIENT SOFTWARE AND ALL ASSOCIATED MATERIALS TO MOSAIC.

1. **THE SERVICE:** The Service consists of dial-up or high speed Internet Protocol ("IP") connectivity to the Mosaic portal, as well as access or connectivity to any of the online resources which may be provided by Mosaic or be available from other service providers participating in or connected to Mosaic's Service, including without limitation, personal web pages available through Mosaic. On public access numbers, Mosaic may, at its discretion employ various methods, such as 'inactivity timeouts' and session time limits to ensure public access lines are not converted to dedicated (24x7) connections. You agree not to employ any techniques, processes or software designed to circumvent these methods. Unless explicitly stated otherwise, any new features that enhance the current Service shall be subject to the terms and conditions of this Agreement. Some of the additional services may be provided without charge to users of Mosaic's Service, but separate charges may be applicable to some of these other services. These charges may appear on your bill from Mosaic, or they may be billed to you separately by the providers of such services. Some other providers may also have additional registration or eligibility requirements in order to use their services. You acknowledge and agree that Mosaic is not responsible and shall not be liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, goods or services available on or through their respective providers.

2. **TERM AND TERMINATION:** This Agreement for the use of the Service will be in effect from the date your application is accepted by your local provider. This Agreement and your use of the Service may be terminated by you by written or verbal notice to your local provider (via e-mail, fax, telephone or U.S. mail). This Agreement and your use of the Service may be terminated by Mosaic at any time with or without notice to you for any reason, including, without limitation, for lack of use, nonpayment of fees, or if Mosaic believes that you have violated or acted inconsistently with the letter or spirit of this Agreement. Pursuant to the Digital Millennium Copyright Act of 1998, Mosaic will terminate service to repeat copyright infringement offenders. Mosaic may also in its sole discretion and at any time discontinue providing the service, or any part thereof, with or without notice to you. The provisions of paragraphs 3-9 and all obligations of and restrictions on you and any user of your account with respect to the Service shall survive any termination of this Agreement.

3. **SERVICE RATES; PAYMENT OF FEES; PENALTIES:**

- a) The rates and charges for the Service shall be as set forth by your local provider. Rates and charges, and other terms and conditions of the Service, are subject to change by Mosaic from time to time by notice to you provided on the Service or otherwise.
- b) Mosaic's accounting cycle begins on the first day of each calendar month. You will be invoiced one

month in advance for usage of the Service. You agree to pay the applicable fees as set forth on your invoice by the due date, and to pay any interest or late fees incurred for late payment of the required fees.

c) In the event you do not pay the fees invoiced to you by the due date, the Service will be inaccessible to you until you pay all fees owed to Mosaic as well as a reconnection fee.

#### 4. THE RESPONSIBILITIES OF USER:

- a) You agree that you will be the only user of your username and password and that you will not transfer or disclose either your username or password to any other person.
- b) You agree not to transmit or publish on or over the Service any information, software or other content which violates or infringes upon the rights of others.
- c) You agree to comply with all applicable laws, rules and regulations in connection with the Service.
- d) You acknowledge and agree that you are aware that certain content, services or locations of the Service or of other parties that may be accessible through the Service may contain material that is unsuitable for minors (persons under 18 years of age) and that Mosaic does not screen or censor such content with regard to copyright, obscenity, safety, integrity or reliability. You agree to supervise usage of the Service by any minors whom you permit to use the Service.

5. POLICIES OF USE: Mosaic Service shall only be used for lawful purposes. Use of the Service must comply with the then-current version of the Mosaic policies adopted from time to time, including (without limitation) the ACCEPTABLE USE POLICY, the DESIGNATED AGENT FOR COPYRIGHT NOTICES POLICY and the PRIVACY POLICY (collectively, the Policies) which are made a part of this Agreement and which are provided to you or otherwise made available on the Mosaic Network for your review. Mosaic reserves the right to amend the Policies from time to time, effective upon posting of the revised Policies on the Mosaic Network or other notice to you. Mosaic reserves the right to suspend the Service or access to the Network upon notice for a violation of the Policies.

6. USAGE THRESHOLD: All MOSAIC High Speed Internet Services include 25 gigabytes (Usage Threshold) of transferred data during each calendar month. Internet usage in excess of the Usage Threshold will incur charges of \$1.00 per gigabyte of transferred data. MOSAIC will invoice and Customer agrees to pay for Additional Internet usage above the 25 gigabytes included with the service.

7. LIMITATION OF WARRANTIES AND LIABILITY; DISCLAIMER OF WARRANTIES: YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER MOSAIC NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES MOSAIC OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS DISTRIBUTED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, OTHER THAN THOSE WARRANTIES (IF ANY) WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS CUSTOMER AGREEMENT, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED. NEITHER MOSAIC NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS SHALL HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES SUFFERED BY YOU OR ANY OTHER PARTY AS A RESULT OF THE OPERATION OR MALFUNCTION OF THE SERVICE, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU EXPRESSLY ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO ALL CONTENT OR OTHER SERVICES AVAILABLE THROUGH THE SERVICE. YOU AGREE THAT YOU WILL NOT IN ANY WAY HOLD MOSAIC RESPONSIBLE FOR ANY SELECTION OR RETENTION OF,

OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICE (INCLUDING THOSE WITH WHOM MOSAIC MAY CONTRACT TO OPERATE VARIOUS AREAS ON THE SERVICE).

8. YOUR REMEDIES: Your sole and exclusive remedy for any failure or non-performance of the Service (including any associated software or other materials supplied in connection with the Service) shall be for Mosaic to use commercially reasonable efforts to repair the Service.

9. LIMITATION OF LIABILITY: In the event that a court should hold that the limitations of liabilities or remedies available as set forth in this Agreement, or any portions thereof, are unenforceable for any reason, or that any of your remedies under this Agreement fail of their essential purpose, you expressly agree that under no circumstances shall Mosaic's total liability to you or any party claiming by, through or under you for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, in the aggregate, exceed the amount of charges paid by you for use of the Service under this Agreement during the twelve-month period preceding the date such claim first arose.

10. INDEMNIFICATION BY YOU: You shall indemnify and hold harmless Mosaic and any of its underlying service providers, information providers, licensors, employees or agents from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs, and expenses, including reasonable attorneys fees, arising from or relating to your use of the Service, or any act, error, or omission of you or any user of your account in connection therewith, including, but not limited to, matters relating to incorrect, incomplete, or misleading information; libel; invasion of privacy; infringement of a copyright, trade name, trademark, service mark, or other intellectual property; any defective product or any injury or damage to person or property caused by any products sold or otherwise distributed through or in connection with the Service; or violation of any applicable law.

11. USE OF MATERIALS, MARKS AND INFORMATION:

a) You retain any copyright, trademark, patent or other intellectual property rights in the material or the products, services, processes or technology created by you and posted or uploaded to the Service. Mosaic reserves the right to use and/or copy such material in the day-to-day operation of its business.

b) You may use, copy and distribute the materials found on the Service for internal, noncommercial, informational services only. All copies that you make of the material must bear any copyright, trademark or other proprietary notice which pertain to the material being copied. Except as authorized in this paragraph, you are not being granted a license under any copyright, trademark, patent or other intellectual property right in the material or the products, services, processes or technology described therein. All such rights are retained by Mosaic, its affiliates and/or any third party owner of such rights.

c) The Mosaic company names and logos and all related product and service names, design marks and slogans are the property of Mosaic or its affiliates. You are not authorized to use any Mosaic name or mark in any advertising, publicity or in any other commercial manner without the prior written consent of Mosaic.

d) Any feedback, data, answers, questions, comments, suggestions, ideas or the like, which you send to Mosaic will be treated as being non-confidential and nonproprietary. Mosaic assumes no obligation to protect such information from disclosure and will be free to reproduce, use, and distribute the information to others without restriction. Mosaic will also be free to use any ideas, concepts, know-how or techniques contained in such information for any purpose whatsoever including but not limited to developing, manufacturing and marketing products and services incorporating such information. Mosaic may also use your status as a subscriber to the Service for the purpose of marketing to you other Mosaic products and services.

12. ENDORSEMENTS: All product and service marks contained on or associated with the Service that are not Mosaic marks are the trademarks of their respective owners. References to any names, marks, products or services of third parties or hypertext links to third party sites or information do not necessarily constitute or imply Mosaic's endorsement, sponsorship or recommendation of the third party, information, product or service.

13. BROWSER SOFTWARE: If any Internet browser or other software has been provided to you for use with the Service, you agree to be bound by and to comply with the terms and conditions of the separate software license which is applicable to and was provided to you along with such software.

14. PERSONAL WEB PAGES: Mosaic may make personal web pages available as a feature of the Service as set forth in your acknowledgment package. If you subscribe to this feature the following provisions of this Section shall apply (in addition to the other provisions of this Agreement):

a) Mosaic may provide a listing/link to your personal web page on its Mosaic service portal or other mechanisms. By subscribing to the personal web page feature, you authorize and grant Mosaic the right to use your name, web site address and similar information in such listing or directory sites or applications. You may use the complete address (URL) granted to you as part of the personal web page feature (which may have names or marks of Mosaic embedded therein) so long as you are obtaining the personal web page feature from Mosaic hereunder, but only for the purpose of identifying the location of your personal web page on Mosaic's Service. Otherwise, you shall not utilize the name or any marks of Mosaic or any of its affiliates in any press releases, promotional materials or other commercial manner without the express prior written approval of Mosaic in each instance.

b) Ownership of all graphics, text or other information or content materials supplied or furnished by you for incorporation into or delivery through your personal web page shall remain with you (or the party which supplied such materials to you). Ownership of any software developed or modified by Mosaic and all graphics, text or other information or content materials supplied or furnished by Mosaic for incorporation into your personal web page, shall remain with Mosaic (or the party which supplied such materials to Mosaic), and may be used only while you are obtaining the personal web page feature from Mosaic. The domain name and address (URL) granted to you for use with the personal web page feature shall remain the property of Mosaic, shall be used by you only so long as you are obtaining the personal web page feature from Mosaic hereunder, and may be subject to change by Mosaic or applicable Internet domain name registry or granting authority from time to time. Mosaic reserves the right to approve subscriber Uniform Resource Locator (URL's) that will be used in conjunction with a Mosaic registered domain name and personal web page feature. URL's registered using a Mosaic owned domain name are not transferable by subscribers upon account termination and will be retained by Mosaic.

c) You acknowledge and agree: (i) that the primary function of Mosaic's personal web page feature as it relates to your personal web page is to facilitate access by end users to the information provided through your personal web page; (ii) that Mosaic has no proprietary, financial, or other interest in any of the content or information that may be described in or made available through your personal web page; and (iii) that you are solely responsible for the content, quality, performance, and all other aspects of the information or other content contained in or provided through your personal web page. You represent and warrant that you will own or have the right to use and offer all such information or other content in the manner in which the same will be used, offered or provided in connection with your personal web page prior to posting it on your personal web page. You shall indemnify and hold harmless Mosaic from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs, and expenses, including reasonable attorneys fees, arising from or relating to your personal web page or an end user's use thereof, or any act, error, or omission of yours in connection therewith, including, but not limited to, matters relating to incorrect, incomplete, or misleading information; libel; invasion of privacy; infringement of a copyright, trade name, trademark, service mark, or other intellectual property; or violation of any

applicable law.

## 15. GENERAL

- a) Mosaic shall not be responsible for any delay in delivery or performance of any of its duties hereunder due to acts of God, acts or omissions of any telephone network or any other occurrence commonly known as force majeure.
- b) Your right to use the Service is not transferable and is subject to any limits established by Mosaic, and by your credit card company if billing is through a credit card.
- c) No action, regardless of form, arising out of the Service or this Agreement may be brought by you or any party claiming by, through or under you more than one year after the cause of action has arisen.
- d) This Agreement and the Service shall be governed by the laws of the State of Wisconsin, without regard to its conflicts of laws provisions. By using the Service, you agree that any disputes between you and Mosaic shall be brought exclusively in the State of Wisconsin or the United States District Court for the District of Wisconsin. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.
- e) This Agreement and any modifications published by Mosaic over the Service constitute the entire and only agreement between you and Mosaic with respect to the Service and supersede all other communications and agreements with regard to the subject matter hereof. By posting updated versions of this Agreement on the Service or otherwise providing notice to you, Mosaic may modify the terms of this Agreement or prices for the Service, and may discontinue or revise any or all other aspects of the Service in its sole discretion and without prior notice. All such changes shall become effective upon posting of the revised Agreement on the Service. The updated, on-line version of this Agreement shall supersede any prior paper or disk-based copies of this Agreement that may have been included in the Acknowledgement package, any browser software or related materials provided by Mosaic.
- f) You are responsible for and must provide all telephone and other equipment, software (other than any browser software that may be provided by Mosaic) and services necessary to access the Service. NEITHER Mosaic, NOR ITS PARENT COMPANY, OFFICERS, AGENTS AND LOCAL PROVIDERS SHALL BE LIABLE FOR ANY TOLL CHARGES WHICH RESULT BY YOUR ESTABLISHING A CONNECTION THROUGH A NON-LOCAL NUMBER.
- g) Mosaic will cooperate with law enforcement officials in the pursuit of information or access to data when presented with appropriate authorization from a court having jurisdiction over the subject matter. You release and hold Mosaic harmless for any disclosure of information, including personally identifiable information, e-mail, confidential information or contact information, to such law enforcement officials.
- h) Mosaic will cooperate with requests for information accompanying subpoenas or similar court orders for disclosure of information in civil cases. At least five (5) business days before disclosing such information, Mosaic will attempt to contact the affected subscribers at the last known mailing address. You release and hold Mosaic harmless for any disclosure of information, including personally identifiable information, e-mail, confidential information or contact information, in response to such subpoenas or court orders.

16. BILLING OFFICE SITES: Additional information relevant to your specific account, including additional billing and payment information for the Services provided by Mosaic, shall be available from your local provider.