



**Mosaic One**  
**General Terms and Conditions**  
**3.15.2021**

These GENERAL TERMS AND CONDITIONS (the “Mosaic Terms”) govern the purchase of the ADTRAN Mosaic One suite of products and services. These Mosaic Terms shall become effective between ADTRAN, Inc., a Delaware corporation with a principal place of business located at 901 Explorer Boulevard, Huntsville, Alabama 35806 USA and the customer (“Provider” or “You”) that accepts the offer for Services set forth in a Service Order. In the event of a conflict between the Mosaic Terms and a Service Order, the terms of the Service Order will control.

**1. Services.** ADTRAN offers the following Subscription Services on the terms set forth herein. The features and functionality of the Subscription Services are further described at <https://www.adtran.com/index.php/Mosaic-one>.

**MOSAIC SUBSCRIBER SUITE:**

- Mosaic Customer Experience  
*powered by Plume*
- Mosaic Subscriber Insight
- Mosaic Device Manager
- Mosaic Home Analytics

**MOSAIC NETWORK SUITE:**

- Mosaic Network Insight
- Mosaic Cloud Platform
- ADTRAN Operational Environment (AOE)

**2. Definitions.**

“**Aggregated Data**” means any non-personally identifiable, technical, statistical or analytical data gathered or generated directly by use of the Subscription Service, and which ADTRAN collects, gathers and aggregates periodically as part of the service.

“**Connected Device**” means any device that is directly managed through or communicates with the Subscription Service, including but not limited to modems, routers, gateways, set-top boxes, or other customer endpoints.

“**Customer Data**” means any data, information or material of Customer and any User or End User, as the case may be, that Customer processes, stores, or transmits using the Subscription Service.



**“Documentation”** means training materials, user guides, and release notes made available by ADTRAN in connection with the Subscription Service, either as hard copy, or as electronic media.

**“End User”** means (i) the Provider and the Provider’s employees, agents and/or contractors; and (ii) any user that accesses or uses the Subscription Services.

**“Fees”** means the fees for the Services, as further set forth in a Service Order.

**“Intellectual property rights”** are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the rights to exclude others from using, making, having made, selling, offering to sell, and importing patented subject matter and to practice patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship; (iv) rights to Confidential Information that derives independent economic value, actual or potential, as reasonably determined by the disclosing Party, by virtue of remaining confidential; and (v) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual property rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including privacy rights and any rights in databases recognized by applicable law.

**“Professional Services”** means any implementation, configuration and installation of the Subscription Services, consulting, training, advance or on-site support, or other professional services related to the implementation, configuration, or use of the Subscription Services (not including any support services). Professional Services are provided under the terms of a separate Service Order with its corresponding Statements of Work.

**“Service Order”** means a document entered into between the Parties pursuant to these Mosaic Terms that details the following: (i) the specific Services that ADTRAN will provide to Provider; (ii) the Term applicable to such Services; (iii) the invoice schedule and fees payable by Provider to ADTRAN for the Services; and (iv) any other commercial terms mutually agreed to by the Parties with respect to the Services.

**“Services”** means Professional Services, support services, and Subscription Service.



**“Statement of Work”** means a document that is executed (signed) by the Parties, under the terms of a Professional Services Order that documents the Professional Services to be provided, the fees for the Professional Services, deliverables to be provided, and related details.

**“Subscription Service”** means the provision and remote management of ADTRAN’s proprietary software-as-a-service solutions, any additional add-on services and any related applications configured and operated by or on behalf of ADTRAN for use by Provider via internet access, including the equipment connectivity and third-party items required by ADTRAN to make such Subscription Services available. The term Subscription Services includes the Documentation and Updates to the Subscription Services. The features and functionality of the Subscription Services are further described <https://www.adtran.com/index.php/mosaic-one>.

**“Term”** means the duration that Provider has the right to use the Service(s), as described in the corresponding Service Order.

**“Updates”** means modifications, bug-fixes, corrections, or minor enhancements to the Subscription Services to correct errors or deficiencies, provide other incremental updates and corrections, or that are identified by ADTRAN as mandatory changes to the Subscription Service.

**“Work Product”** means any inventions, discoveries, software or other works of authorship (including, without limitation, configuration of the Subscription Services), and other proprietary materials or work product developed by or for ADTRAN in the course of ADTRAN’s performance of Services, including any and all related and underlying software, databases (including data models, structures, and non-Provider specific data contained therein), specifications, technology reports and documentation. Work Product excludes Confidential Information of Provider.

**3. Term and Commencement of Services.** The initial term of the Subscription Services shall commence on the date set forth in the Service Order as the start date (“Start Date”) and continue for a term of two (2) years, or other such term as stated in the Service Order (the “Initial Term”). Upon expiration of the Initial Term, the term for Subscription Services is automatically renewed for successive one-year terms (a “Renewal Term”), unless a Party provides at least sixty (60) calendar days’ advance written notice prior to the expiration of any Renewal Term that it will not renew the Subscription Services. (The Initial Term and any Renewal Terms are collectively, the



"Term"). The term of any Professional Services shall be as mutually agreed in a Statement of Work.

#### **4. Fees.**

**4.1. Description of Fees; Payment Terms.** Provider shall pay to ADTRAN the Fees for the Subscription Service and Professional Services set forth in the applicable Service Order. Provider authorizes ADTRAN to periodically charge, on a going-forward basis, Provider's account in advance for the subscription Fees at the interval (monthly; quarterly; or annually) set forth in the Service Order. Unless otherwise set forth in a Service Order, fees for installation and Professional Services are invoiced and payable in advance. Installation and configuration fees are non-refundable. All fees will be invoiced and payable in U.S. Dollars and are due and payable to ADTRAN thirty (30) days after the date of invoice to Customer for such amounts, unless a different term is agreed on the Service Order. The invoice may include prorated charges to take into account any partial month that may occur as the result of the date Subscription Services are initiated. ADTRAN reserves the right to change its prices at any time, provided that any new pricing shall only apply after the Initial Term or current Renewal Term of the applicable Service Order has terminated or expired.

**4.2. Late Payment Terms.** All payments not made when due shall be subject to late charges at the lesser of (i) 1.5% per month of the overdue amount; or (ii) the maximum amount permitted under applicable law.

**4.3. Invoice Dispute.** Disputes arising from invoices will be handled on a case-by-case basis. Customer must notify ADTRAN of any invoice dispute within thirty (30) days of the invoice date or such invoice will be deemed approved and accepted by Provider. Both Parties will use their commercially reasonable efforts to assess and rectify, if applicable, discrepancies found within a disputed invoice as soon as commercially practicable. Written statements disputing charges and any other written notification to ADTRAN must be sent to ADTRAN, Inc., Accounts Receivable, P.O. Box 140000, Huntsville, AL 35814-4000.

**4.4. Taxes.** Provider shall pay all taxes, tariffs and transportation costs relating to, or incurred under, these Mosaic Terms or a Service Order (including any sales, use, excise or value added taxes), exclusive of taxes based on or measured by ADTRAN's net income, unless Provider is exempt from the payment of such taxes and provides ADTRAN with acceptable evidence of such exemption. If Provider is legally required



to pay withholding taxes on the fees payable to ADTRAN (or make any similar tax reduction) (each a "Fee Reduction Tax"), then (i) Provider shall deduct the applicable Fee Reduction Tax from the fees prior to payment to ADTRAN; (ii) timely remit the Fee Reduction Taxes to the appropriate taxing authorities; and (iii) promptly furnish ADTRAN with tax receipts evidencing the payments of the Fee Reduction Taxes on such fees. However, the fees payable by Provider to ADTRAN shall be adjusted to the extent necessary to ensure that, after such Fee Reduction Taxes are applied, ADTRAN receives and retains, a net amount equal to the fees that ADTRAN would have received and retained absent the deductions required for the Fee Reduction Taxes.

## **5. Subscription Services.**

**5.1. Right of Access.** Upon payment of the applicable Fees, ADTRAN grants Provider a non-exclusive, non-transferable, non-sub-licensable, limited right during the Term to access, use, and upon written authorization by ADTRAN, to re-sale to End Users, the Subscription Services. Unless the Subscription Services are expressly authorized for re-sale, Provider may only use the Subscription Service exclusively for Provider's internal business operations. Provider agrees to ensure that Users and End Users only use the Subscription Services in accordance with the specifications and restrictions set forth in these Mosaic Terms and a Service Order, including but not limited to, the number of Connected Devices and type of End Users contracted. Provider acknowledges and agrees that, as between Provider and ADTRAN, Provider shall be responsible for all acts and omissions of Users and End Users, and any act or omission by a User or End User which, if undertaken by Customer, would constitute a breach of these Mosaic Terms, shall be deemed a breach of these Mosaic Terms by Customer. Provider shall undertake appropriate efforts to make all Users and End Users aware of the provisions of these Mosaic Terms as applicable to such User's and End User's use of the Subscription Service and shall cause End Users to comply with such provisions. If Provider is authorized to re-sell Subscription Services, Customer agrees to re-sell to End Users on terms no less favorable to or protective of ADTRAN or its suppliers than those set forth in these Mosaic Terms. Provider may make a reasonable number of copies of the Documentation and allow its Users and End Users to use the Documentation to configure and use the Subscription Service. Provider will have no right to use the Documentation for another purpose without the prior written consent of ADTRAN. Provider shall use reasonable efforts to prevent unauthorized access to or use of the Subscription Service and is responsible for



maintaining the confidentiality of its usernames, passwords and account information. All actions taken using the Provider's usernames and passwords shall be deemed an action of Provider. Provider agrees to immediately report to ADTRAN any loss or compromise of any username or password information or any unauthorized use of or access to the Subscription Service.

**5.2. Restrictions.** All rights not expressly granted to Provider in these Mosaic Terms are expressly reserved to ADTRAN and its suppliers. The Subscription Services may only be used by Provider and End Users, and unless expressly contracted herein, not by any third party including any parent, subsidiary or other affiliate companies. Provider will not (i) rent, lease, loan, sublicense, or rehost any portion of the Subscription Service or use any portion of the Subscription Service to provide service bureau, managed service, subscription service or software, or outsourcing services to any third party (unless otherwise agreed in a Service Order); (ii) transfer or assign any of the rights granted to Provider under these Mosaic Terms without the prior written consent of ADTRAN except as otherwise permitted below; (iii) modify, or create derivative works based in whole or in part upon the Subscription Services; (iv) use the Subscription Services to provide consulting services or services similar to those provided by ADTRAN to third parties; (v) remove, alter, obscure, or exclude any proprietary notice on the Subscription Services, Documentation, or advertising materials; (iv) contest, challenge, or otherwise make any claim or take any action adverse to ADTRAN's or any of its licensors' ownership of, or interest in, the Subscription Services, advertising materials, trademarks or copyrights, or relevant documentation, (v) engage in any deceptive, misleading, or unethical practices in connection with its activities under these Mosaic Terms, or (vi) copy the contents of the Subscription Services except as expressly permitted herein. Unless expressly allowed by law, Provider will not and will not permit others to attempt to decompile or reverse assemble or engineer any portion of the Subscription Services or to obtain any source code or to determine the underlying algorithms of the Subscription Service. *NOTE: Mosaic Provider Experience may not be sold, and no equipment may be shipped, to Portugal or Canada (other than the provinces of Alberta, British Columbia, and Saskatchewan).*

**5.3. Device Requirements.** Providers are required to use hardware devices that are approved for use with the associated Subscription Services. Provider is responsible for verifying if any third party hardware and/or software are compatible with each Subscription Service. For Mosaic Customer Experience, Provider and any



End User must use OpenSync enabled-hardware embedded with OpenSync device software (such hardware, "Enabled Hardware") to receive the benefit of Mosaic Customer Experience, and Provider acknowledges that Enabled Hardware is required for Mosaic Customer Experience to operate. Neither Provider nor End Users may modify the Enabled Hardware delivered in connection with Mosaic Customer Experience or change any configuration parameters in any way without the express written consent of ADTRAN. Other Subscription Services may have hardware and device requirements as set forth in documentation provided by ADTRAN or in a Service Order.

**5.4. Third Party Components.** Provider agrees and understands that as a Subscription Service, the platform contains components and software owned by and licensed from third parties (the "Third Party Components"). Provider understands and acknowledges that the Third-Party Components are not licensed pursuant to the provisions set forth in Section 5.1. Provider and End Users shall have only such rights and/or licenses, if any, to use the Third-Party Components as are set forth in these Mosaic Terms and any associated Documentation.

**5.5. Mobile Application.** A mobile application may be available for the Subscription Service, in which case Provider' and/or End Users may be required to "click-thru" the terms and conditions of a third-party end user license agreement in order to download and use such application. Notwithstanding the foregoing, the terms that govern an End User's use of the Subscription Services are entered into between the Provider and End User, subject only to the obligation of Provider under these Mosaic terms.

**5.6. Cloud Providers.** Provider hereby agrees and consents that in providing the Subscription Service, ADTRAN may enter into an arrangement with and utilize the services of third-party cloud services provider(s) ("Cloud Providers"). ADTRAN shall require that any such Cloud Provider be contractually bound to provide substantially the same level of protection with respect to Provider's Data as provided by Section 9. If applicable, ADTRAN will make the Cloud Provider service levels, acceptable use policies and information security policies available to Customer.

**5.7. Installation and related professional services.** ADTRAN will provide installation and configuration services and other related professional services ("Professional Services") for Providers or in the case of re-sale, to End Users, through its employees or subcontractors subject to the terms (including applicable fees) of a



Service Order and/or its applicable Statement of Work between ADTRAN and Customer describing the installation and/or other services to be provided by ADTRAN. If the Parties determine that a change in scope of services is required for a given Service Order and Statement of Work, the Parties will document that change, together with any adjustment in fees, through a mutually agreed change order or amendment to that Service Order. In ADTRAN's performance of Services, ADTRAN will (i) assign employees and/or subcontractors with knowledge and expertise suitable for the work described in the relevant Service Order; (ii) use commercially reasonable efforts to perform the Services set forth in the applicable Service Order; and (iii) perform such Services in a professional manner in accordance with industry standards.

## **6. Support Services.**

**6.1. Technical Support.** Provider acknowledges and agrees that Provider is responsible, and not ADTRAN, for any and all technical support provided to End Users. ADTRAN provides telephone or other customer support to Provider, which may be accessed at the means and at the times identified by ADTRAN in a separate services description or otherwise. Problem areas outside the scope of ADTRAN's ability to troubleshoot include, but are not limited to the following: (a) End User supplied equipment or equipment provided by Provider and not by ADTRAN; (b) End User in-house wiring, WAN and LAN infrastructure; (c) data network connectivity, rights/privileges, IP address changes; and (d) End User site power.

**6.2. Provider Responsibilities.** Provider will, and will cause its End Users to, (i) provide ADTRAN with reasonable access to facilities as necessary for the provision or configuration of the Subscription Services, subject to reasonable written policies regarding vendors on premises; (ii) cooperate fully and in good faith with ADTRAN for purposes of configuration, implementation, migration and provision of support services by ADTRAN. Provider understands and agrees that ADTRAN is not liable for any delays resulting from the actions or inactions of Provider or and End User. Consequently, in the event of any such delay caused by Provider or any End User, Provider assumes sole responsibility and ADTRAN reserves the right to invoice Provider in accordance with the Service Order or SOW, as the case may be. Provider is responsible for any activities performed under credentials issued by it or any User or End User to ADTRAN. The Subscription Services and Documentation contain proprietary and confidential information of ADTRAN and its suppliers, and Customer must use at least reasonable means to protect the Subscription Services from



unauthorized access, use or copying. Customer may not disclose the Subscription Services, or their respective components, features or functionality to third parties except as expressly permitted herein.

**7. Ownership of the Subscription Service.** This is not an agreement for the sale of any software. Except where the Parties agree pursuant to a Service Order or other written agreement between the Parties that title to hardware purchased by Provider transfers from ADTRAN to Provider, Provider agrees that these Mosaic Terms and each Service Order is a term services and license agreement and that as between the Parties, ADTRAN and its licensors and suppliers own all right, title and interest in all Intellectual Property Rights in and to the Services, the Documentation, the Work Product, ADTRAN trademarks, the components and any and all configurations, derivative works, know-how, upgrades, updates, developments, modifications, changes, alterations, edits, conversions, improvements or the like made to each of the foregoing (the "ADTRAN Property"). All rights not expressly granted under these Mosaic Terms are reserved to ADTRAN and its licensors and suppliers, and there are no implied rights. Provider agrees not to undertake any action against ADTRAN that would in any way preclude ADTRAN from continuing to develop, use or commercialize the Services, and nothing in these Mosaic Terms shall be construed to impair, preclude or prohibit ADTRAN from doing so. Provider agrees to retain and reproduce all copyright, trademark and other proprietary notices contained on or in the ADTRAN Property as delivered to Provider on all copies of such ADTRAN Property and shall not seek to remove any such notices. Provider grants to ADTRAN and its licensors and suppliers a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, corrections, recommendations or other feedback provided by Provider, including any of its authorized users, relating to the operation of the Subscription Service.

## **8. Confidentiality.**

**8.1. Definition. "Confidential Information"** means information designated as confidential or proprietary or that should be considered as confidential from its nature or from the circumstances surrounding its disclosure. Provider acknowledges that, without limitation, the ADTRAN Property constitutes "Confidential Information" of ADTRAN and/or its suppliers and licensors. Provider Data is "Confidential Information" of Provider.



**8.2. Use and Disclosure.** With respect to any Confidential Information a Party receives (“Recipient”) from the other Party (“Discloser”), the Recipient shall: (i) keep such information confidential; (ii) use the same degree of care for the Discloser’s Confidential Information that it uses for its own Confidential Information, but in no event with less than reasonable care; (iii) not use the Confidential Information other than in connection with the performance of these Mosaic Terms and each Service Order; and (iv) not divulge the Confidential Information to Recipient’s personnel, unless such personnel have a need to know and have undertaken a written obligation to keep the Confidential Information secret consistent with the terms of these Mosaic Terms. Recipient agrees to use all reasonable steps to ensure that the Discloser’s Confidential Information is not disclosed by Recipient’s personnel in violation of this Section. If a Recipient is required by any government authority or by applicable law to disclose any Confidential Information, then such Recipient shall give sufficient notice (to the extent permitted by law) of the requirement to the Discloser to enable the Discloser to seek appropriate relief from all or part of such requirement.

**8.3. Exclusions.** Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large other than as a result of a breach by the Recipient of any obligation to the Discloser; (ii) was known to the Recipient free of any obligation of confidence prior to disclosure by the Discloser; (iii) is disclosed to the Recipient on a non-confidential basis by a third party who did not owe an obligation of confidence to the Discloser; or (iv) is developed by the Recipient independently of and without reference to any part of the Confidential Information. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

**8.4. Customer Data.** Customer Data is Confidential Information of Provider and/or End Users, as the case may be. ADTRAN applies security practices in compliance with industry standards to protect Customer Data from unauthorized access, theft and misappropriation; however, ADTRAN does not warrant that the Subscription Service or any Customer Data will be completely secure from interference or disruption by factors outside of its control, including viruses, hackers attacks, disruptions to the Internet, issues with third-party service providers, issues created by Customer’s systems or Customer Data, or a Force Majeure event. Customer hereby grants, and shall cause its Users and End Users to grant, to



ADTRAN and its licensors and suppliers a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for ADTRAN and its licensors and suppliers to provide the Subscription Service to Customer under these Mosaic Terms, and a non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data transformed into any Aggregated Data. Customer represents and warrants that it possesses sufficient license rights in and to the Customer Data, and that it has obtained all the required consents from data owners, as may be necessary, to permit the use contemplated under these Mosaic Terms. Customer bears all responsibility and liability for the accuracy and completeness of the Customer Data and ADTRAN's and its licensors and suppliers access, possession and use as permitted herein. As between the Parties, Customer is considered the controller of Customer Data and Customer will have sole responsibility for determining if the collection, storage, and use of its Customer Data under these Mosaic Terms complies with applicable law. Customer acknowledges and consents that (i) the Services provided may require Customer Data to be transferred to a country outside of Customer's country or the country where the Customer Data originated, and (ii) ADTRAN may share Customer Data with its affiliates and business partners (like backbone network providers and Cloud Providers) for the sole purpose of providing the Services hereunder, provided that at all times ADTRAN and its affiliates shall comply with the confidentiality and data protection obligations described hereunder. ADTRAN shall enter into confidentiality agreements with its business partners as protective of Company's Confidential Information as these Mosaic Terms. Unless otherwise expressly agreed in a written document signed by an authorized representative of ADTRAN, ADTRAN shall have no obligation to store Customer Data beyond any period specified in a Service Order and ADTRAN has no obligation to retain Customer Data following thirty (30) days after complete termination of the Services; however, ADTRAN may retain copies of Confidential Information that are stored on ADTRAN's backup and disaster recovery systems until the ordinary course of deletion. Customer shall have thirty (30) days from the date of termination of the Services in which to request a copy of its Customer Data, which will be made available to Customer in the same format maintained by ADTRAN.



**8.5. Aggregated Data.** ADTRAN (its affiliates, licensors, partners and designated agents) may use Aggregated Data to monitor and improve its products, services or to provide customized services or technologies to its customers. ADTRAN collects and uses Aggregated Data in accordance with its privacy policies and in accordance with applicable data protection laws. As between ADTRAN and Customer, Aggregated Data (i) is property of ADTRAN; and (ii) is Confidential Information of ADTRAN.

## **9. Data License; Ownership; and Security.**

### **9.1. Data License.**

**9.1.1. Data.** Provider agrees to transmit, and agrees to cause its End Users to transmit, to ADTRAN certain network data and allow ADTRAN to collect, store and process certain network data (the "Data") in order to provide the Services. Provider and/or its End Users shall deliver the Data electronically, on tangible media, or by other means and frequency to be mutually agreed. ADTRAN shall use the Data in accordance with these Mosaic Terms, and may request additional Data from Provider and/or its End Users from time to time. Provider agrees to cooperate with ADTRAN so that the Data reasonably meets the ADTRAN requirements and objectives to accomplish the Permitted Use (as defined hereinbelow).

**9.1.2. License Grant.** Provider hereby grants ADTRAN a non-exclusive, non-sublicensable, and non-transferable license during the Term to use, collect, store, process, display, distribute, modify and create derivative works and improvements to the Data solely (i) to audit and troubleshoot Provider's or an End User's internal network; (ii) to improve Provider support; and (iii) to develop the Work Product (collectively, the "Permitted Use"). "Work Product" shall mean (i) any software or other tool ADTRAN creates for the purposes of auditing and troubleshooting customer networks and providing network optimization services, whether for the benefit of Company or third parties ("Software"); (ii) any and all manuals, instruction, specifications and other documents that ADTRAN provides or makes available to Company in any medium and which describes the functionality, components, features or requirements of the Software, including the installation, configuration, integration, operation, use, support or maintenance thereof; (iii) any Derivative Data; and (iv) any Derivative IP. "Derivative Data" shall mean any data that is derived by processing the Data and that is sufficiently different from



the Data so that such Data cannot be reverse engineered or otherwise identified from analysis or further processing. "Derivative IP" shall mean any intellectual property created by or on behalf of ADTRAN within one (1) year after the expiration or earlier termination of a Service Order that includes Data in any form or that is derived in any sense from the Data, including, without limitation, any expression of the same via source code, object code, and associated documentation developed or modified by ADTRAN.

**9.1.3. Use Restrictions.** ADTRAN shall only use the Data for the Permitted Use and shall not disclose, release, distribute, or deliver the Data, or any portion thereof, to any third party without Provider's or its User's prior written consent. Any purpose or use not specifically authorized herein is prohibited unless otherwise agreed to in writing by Company and/or its User.

## **9.2. Intellectual Property Ownership; Work Product; Derivatives.**

**9.2.1.** Except as set forth in Section 9.2.2 hereof, Provider acknowledges and agrees, and shall cause its Users to acknowledge and agree, that all right, title and interest in and to (i) the Work Product and (ii) all works, inventions and other subject matter incorporation, based on or derived from any Work Product, including any and all Derivative Data, Derivative IP, and other customizations, enhancements, improvements and other modifications thereof (collectively, "Derivatives"), in each case by whomsoever made and including all intellectual property rights therein, are and will remain, with ADTRAN. Neither Provider nor its Users has any right or license with respect to any Work Product or Derivatives.

**9.2.2.** As between the Parties, Provider and/or its Users are and will remain the sole and exclusive owner of all right, title and interest in and to the Data, including all intellectual property rights therein, subject only to the license granted under Section 9.1.2.

**9.2.3.** Providers shall not, and shall not permit any other person to, access or use any Work Product except as expressly permitted by ADTRAN.

## **9.3. Data Security**

**9.3.1. Definitions.** Capitalized terms used in this Section 9.3 shall have the following meanings:

**9.3.1.1.1. "Authorized Persons"** means ADTRAN's employees, contractors, and agents who have a need to know or otherwise access



Personal Information to enable ADTRAN to use the Data for the Permitted Use and otherwise perform its obligations under these Mosaic Terms, and who are bound by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of these Mosaic Terms.

**9.3.1.2. "Personal Information"** means information that Provider provides or for which Provider provides access to ADTRAN, or information which ADTRAN creates or obtains on behalf of Provider, in accordance with these Mosaic Terms that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); (ii) constitutes Customer Proprietary Network Information (CPNI); or (iii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers), in case of subclauses (i), (ii) and (iii), including Sensitive Personal Information as defined hereinbelow. Provider's or any User's business contact information is not by itself Personal Information.

**9.3.1.3. "Sensitive Personal Information"** means an individual's (i) government-issued identification number, including Social Security number, driver's license number, or state-issued identification number; (ii) financial account number, credit report information, or credit, debit, or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual's financial account; or (iii) biometric, genetic, health, or health insurance data.

### **9.3.2. ADTRAN and Company Obligations.**

**9.3.2.1.** ADTRAN will:

**9.3.2.1.1.** be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or



disclosure of Personal Information under its control or in its possession by all Authorized Persons.

**9.3.2.1.2.** not disclose Personal Information to any person other than its Authorized Persons without Customer's or a User's prior written consent unless required by applicable law, in which case, ADTRAN will use reasonable efforts and to the extent permitted by applicable law notify Customer and any such User before such disclosure or as soon thereafter as reasonably possible.

**9.3.2.1.3.** use and disclose Personal Information only for the purposes and uses for which Customer and/or a User provides the Personal Information, or access to it, pursuant to the terms and conditions of these Mosaic Terms, and not use or otherwise disclose or make available Personal Information for ADTRAN's own purposes without Customer's or a User's prior written consent. ADTRAN may aggregate, de-identify, or anonymize Personal Information, and use such aggregated, de-identified, or anonymized data, which shall no longer be considered Personal Information, for its own research and development purposes.

**9.3.2.2.** Provider will, and will cause its Users to:

**9.3.2.2.1.** be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession.

**9.3.2.2.2.** comply with any applicable laws and regulations and use only secure methods, according to accepted industry standards, when transferring or otherwise making available Personal Information to ADTRAN. Provider represents and warrants that the Data has been collected, processed and transferred, as the case may be, to ADTRAN in accordance with all data protection laws applicable to Provider.

**9.3.2.2.3.** provide written notice to ADTRAN if any information Provider or any User provides to ADTRAN under this Agreement contains Personal Information. ADTRAN will not be responsible for



determining on its own that any information Company provides under this Agreement qualifies as Personal Information.

**9.3.2.2.4.** provide ADTRAN with any and all information reasonably requested that is necessary for ADTRAN to audit Provider's and any End Users' use of the Subscription Services to verify usage, including for invoicing purposes.

**9.3.3.** ADTRAN shall use all reasonable legal, organizational, physical, administrative and technical measures and security procedures to safeguard and ensure the security of the Data and to protect the Data from unauthorized access, disclosure, duplication, use, modification or loss.

**9.3.4. Return or Disposal of Personal Information.** At any time during the term of a Service Order at Provider's written request, ADTRAN shall promptly return to Provider or securely dispose of the Personal Information specified by Provider that is in ADTRAN's possession or in the possession of Authorized Persons, and shall notify Provider that such Personal Information has been returned to Provider or disposed of securely. If ADTRAN is not reasonably able to return or securely dispose of Personal Information, including, but not limited to, Personal Information stored on backup media, ADTRAN will continue to protect such Personal Information in accordance with these Mosaic Terms until such time that it can return or securely dispose of such Personal Information.

**10. Trademarks.** ADTRAN grants to Provider, during the Term of this Agreement, the right to use the word "ADTRAN," the ADTRAN logo and any other trademark owned by ADTRAN (collectively, the "ADTRAN Marks") solely in accordance with the terms of ADTRAN Trademark and Logo Usage Policy located on ADTRAN's website. In addition, Provider is permitted to incorporate (i) advertising, marketing and promotional materials provided by ADTRAN and/or its licensors ("Advertising Materials"); and (ii) in connection with Mosaic Customer Experience, the Plume Design, Inc. ("Plume") trademarks identified at <https://discover.plume.com/trademarks> (the "Licensed Trademarks") into Provider's advertising, marketing, and promotional materials (the "Company Materials"), on condition that any such use complies with the guidelines provided by ADTRAN to Company, as they may be updated from time to time by ADTRAN or its suppliers. Company agrees to provide a copy of its Company Materials to ADTRAN upon request and acknowledges and agrees that the quality and nature of its Company Materials shall be consistent with generally accepted standards in the consumer electronics field.



Company agrees to promptly cease all use of the ADTRAN Marks, Advertising Materials and/or Licensed Trademarks upon ADTRAN's written request. In connection with the Mosaic Customer Experience, Provider shall at all times include "Powered by Plume" in any and all Customer documentation referring to Mosaic Customer Experience.

## **11. Warranties and Disclaimers.**

**11.1. By ADTRAN.** During the Term, ADTRAN warrants that the Subscription Service will substantially conform to the Documentation. ADTRAN will have no warranty obligations for any nonconformance that (i) is caused by factors outside of the control of ADTRAN (such as Force Majeure) and as such could not be remedied by ADTRAN, or (ii) relates to: (a) use of the Subscription Service not in accordance with the Documentation and the provisions of these Mosaic Terms; (b) modification of the Subscription Service except by ADTRAN; or (c) is caused by third party software or hardware. In the event of a breach of the foregoing warranty, ADTRAN will use commercially reasonable efforts to cure any such breach, at no additional cost to Provider within a reasonable timeframe. If ADTRAN is unable to cure such breach within 90 days after receipt of Provider's written notice of such breach, ADTRAN may, at its option and as Provider's sole remedy, terminate these Mosaic Terms by serving written notice in accordance with Section 15.6. Upon such termination, ADTRAN will provide a pro-rated refund of any prepaid fees from the remainder of the then-current Term. This Section 11.1 will be Provider's exclusive remedy for breach of this warranty.

While ADTRAN will use commercially reasonable efforts to complete work under a given Professional Services Order in accordance with the estimated schedules and fees, Provider acknowledges that timing and cost requirements may be subject to factors beyond ADTRAN's control (including Provider's fulfillment of its obligations hereunder in a timely manner). Accordingly, ADTRAN will not be liable for any resulting delays or overruns or bear liability in connection therewith, regardless of cause. Provider acknowledges that products or services made available to Provider on an evaluation only or "early release" basis are provided "as is" and without warranty, support or indemnification terms.

**11.2. By Provider.** Provider warrants to ADTRAN that Provider will provide all required consumer notices and disclosures and, where required, secure consents in compliance with applicable laws prior to using or giving access to End Users to the Subscription Service.



**11.3. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN THESE MOSAIC TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ADTRAN PROPERTY, THIRD-PARTY COMPONENTS, SERVICES AND ANY OTHER MATERIALS, DATA OR INFORMATION PROVIDED BY ADTRAN ARE PROVIDED "AS IS," AND ADTRAN (AND ITS LICENSORS AND SUPPLIERS) DISCLAIM ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ADTRAN, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, DOES NOT WARRANT THAT THE ADTRAN PROPERTY, THIRD-PARTY COMPONENTS OR ANY SERVICES PROVIDED BY ADTRAN WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OR USE OF THE FOREGOING WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND THAT, ABSENT SUCH DISCLAIMERS, LIMITATIONS AND EXCLUSIONS, THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT. CUSTOMER ASSUMES THE ENTIRE LIABILITY FOR THE SELECTION AND USE OF THE SUBSCRIPTION SERVICES, AND ADTRAN SHALL HAVE NO LIABILITY FOR ANY ERRORS, MALFUNCTIONS, DEFECTS OR LOSS OF DATA RESULTING FROM OR RELATING TO CUSTOMER'S USE OF THE SUBSCRIPTION SERVICE, EVEN IF THE SUBSCRIPTION SERVICE IMPACTS OTHER SYSTEMS OR CUSTOMER OTHERWISE LOSES FUNCTIONALITY.

**12. Limitation of Liability.** EXCEPT FOR ADTRAN'S AND CUSTOMER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF DATA, LOSS OF PROFITS OR REVENUE, OR LOSS OF USE OF THE PRODUCTS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN



ADVANCE. ADTRAN'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY ADTRAN PROPERTY, ANY THIRD-PARTY COMPONENTS OR SERVICES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID TO ADTRAN DURING THE PRECEDING TWELVE MONTHS FOR THE SUBSCRIPTION SERVICE, WORK PRODUCT OR SERVICES UNDER THE ORDER GIVING RISE TO SUCH LIABILITY.

### **13. Indemnification.**

**13.1. By ADTRAN.** ADTRAN agrees, at its expense, to (a) defend or settle any third party claims, actions or demands brought against Provider, where the third party alleges (i) that the Subscription Services, used within the scope of these Mosaic Terms, infringes a U.S. copyright or any U.S. patent issued as of a Service Order Date; and/or (ii) breach or non-fulfillment of ADTRAN's representation and warranty set forth in Section 9.3.2.1; and (b) pay damages, if any, finally awarded by a court of competent jurisdiction against Provider or agreed upon in settlement by ADTRAN (including reasonable attorneys' fees in connection with enforcing this Section 13.1). ADTRAN is not responsible under this Section for any infringement arising out of or related to: (i) Third-Party Components or the Cloud Service Provider, when taken on a stand-alone basis; (ii) any hardware that is sold as part of the Subscription Service, when taken on a stand-alone basis; (iii) modification of the Subscription Service by anyone other than ADTRAN, where the Subscription Service would not infringe except for that modification; (iv) any infringement arising out of any combination of the Subscription Service with other software, hardware, processes or materials where the Subscription Service would not infringe except for such combination; or (v) any data provided by Provider to ADTRAN for processing by the Subscription Service. In the event the Subscription Service is held or believed by ADTRAN to infringe (and provided one of the exclusions do not apply), ADTRAN may, at its sole option and expense, elect to: (A) modify the Subscription Service so that it is non-infringing; (B) replace the Subscription Service (or the infringing features) with non-infringing services or features which are functionally equivalent or superior in performance; (C) obtain a license for Provider to continue to use the Subscription Service as provided hereunder; or (D) terminate the right of access for the infringing Subscription Service (or components) and refund any pre-paid and unused Subscription fees. THE RIGHTS GRANTED TO PROVIDER UNDER THIS SECTION 13 (INDEMNIFICATION)



SHALL BE PROVIDER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION RELATED TO THE SUBSCRIPTION SERVICE.

**13.2. By Provider.** Provider agrees to indemnify and hold ADTRAN and its licensors and suppliers, and its and their directors, officers, employees, and agents ("ADTRAN Parties") harmless from and against any and all damages, costs, liabilities, expenses and settlement amounts incurred in connection with any suit, claim, or action by any third party or regulatory proceeding arising out of (a) Provider's or any End User's misuse of ADTRAN Property, including without limitation modifications by Provider and/or its End Users to the Subscription Services not authorized by the ADTRAN Parties; (b) Provider's breach of its obligations under Section 8.4 (Customer Data); (c) breach of non-fulfillment of Provider's representation and warranty set forth in Section 9.3.2.2; (d) Provider's or any End User's failure to implement a work-around, release, update or other modification to or for the Subscription Services or Enabled Hardware as reasonably provided or directed by ADTRAN Parties at no additional cost to Provider and/or its End Users; and/or (e) Company's failure to include any required terms in its agreements with End Users.

**13.3. Procedure.** For a Party to be responsible under this Section, the Indemnified Party shall (i) promptly notify the Indemnifying Party in writing of its receipt of notice of any such claim; (ii) afford the Indemnifying Party sole control of the defense and all related settlement negotiations of such claim, provided that the Indemnifying Party shall not settle without the Indemnified Party's consent unless it releases the Indemnified Party from all liability; and (iii) provide the Indemnifying Party with reasonable assistance, information and authority necessary to perform its obligations under this Section.

## **14. Termination.**

**14.1. Upon Default.** If either Party breaches any material obligation of these Mosaic Terms, the other Party will give written notice of such default, and, if the Party in breach has not cured the default within thirty (30) calendar days following receipt of such notice, or in the event of non-payment by Provider, within ten (10) calendar days, the non-breaching Party will have the right to terminate these Mosaic Terms and any Service Order without liability or penalty. ADTRAN, at its option, may



terminate these Mosaic Terms and any Service Order on written notice to Customer, if Customer: (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment for the benefit of creditors; (iii) institutes proceedings to be adjudicated as voluntary bankruptcy, or consents to the filing of a petition of bankruptcy against it; (iv) is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of its property or providing for the liquidation of its property or business affairs; or (vi) breaches any of its obligations under Sections 8 (Confidentiality) or Section 7 (Ownership). The right to terminate these Mosaic Terms and any Service Order for cause is in addition to all available remedies at law or in equity.

**14.2. Suspension.** If Provider is more than thirty (30) calendar days late in paying any amounts after due or if Provider's or any End User's use of the Subscription Service or Customer Data violates the rights of any third party or is considered unlawful or puts the entire system in danger, ADTRAN may suspend the Services upon email notice. ADTRAN will exercise reasonable commercial efforts to notify Provider in advance of the suspension so that Provider can take corrective actions, but ADTRAN reserves the right to act immediately if it reasonably believes it may be subjected to civil or criminal liability or regulatory action, or that its provision of the Services will be enjoined or that continued access by Provider may endanger the security of the system.

**14.3. Effect of Termination or Expiration.** Upon any expiration or termination of these Mosaic Terms or any Service Order, ADTRAN may immediately cease providing Services. Within thirty (30) calendar days after termination, each Party will destroy all copies of Confidential and proprietary Information of the other Party, (including Documentation and all other ADTRAN proprietary information related to the Services) that may be in a Party's possession or under its control at the time of termination or expiration. Upon written request, each Party will certify to the other in writing that, to the best of its knowledge, all Confidential or proprietary Information has been destroyed or returned, provided that a Party may keep archival copies if required by law and a Party may retain copies of Confidential or proprietary Information that are stored on the Party's backup and disaster recovery systems until



the ordinary course deletion thereof. ADTRAN will make Customer Data available to Customer as set forth in Section 8.4.

**14.4. Early Termination.** Upon early termination or cancellation by Provider, other than in accordance with Section 14.1, Provider agrees that the entire amount of fees for the Services during the then-current Term shall become immediately due and payable by the Customer. Customer agrees to pay such fees immediately upon the receipt of an invoice therefor.

**14.5. Survival.** The provisions of the following Sections will survive termination or expiration of these Mosaic Terms: Sections 1, 4, 5.2, 5.4, 5.5, 7, 8, 9, 11.2, 11.3, 12, 13, 14.3, 14.4, 14.5 and 15.

## **15. General.**

**15.1. Publicity.** ADTRAN and Provider agree that ADTRAN shall have the right to publicize, including for joint marketing purposes, the fact that Provider is a user of a Subscription Service and to list Provider's name on ADTRAN's standard customer lists.

**15.2. Export Compliance.** The Services are subject to all applicable export control laws and regulations, including without limitation, those of the United States Government and any applicable foreign jurisdiction. Customer agrees that it will not directly or indirectly export, re-export, divert, release, transfer or disclose the ADTRAN Property, or any derivative thereof, to any prohibited or restricted destination, end-use or end-users or to anyone who required a United States export license, except in accordance with all relevant export control Laws and regulations which may require Customer to obtain necessary licenses, approvals or permissions from the appropriate U.S. governmental and all required foreign authorities prior to undertaking such activities. The terms of this Section 15.2 shall survive the termination of any Service Order.

**15.3. United States Government End Users.** The Subscription Service and the ADTRAN Property are "commercial items," as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire only those rights in the Subscription Service that are provided by these Mosaic Terms. For purpose of any



public disclosure provision under any federal, state, or local law, the Subscription Service contains trade secrets and is a proprietary commercial product not subject to disclosure.

**15.4. Governing Law; Jurisdiction.** These Mosaic Terms will be governed by and construed in accordance with the laws of the State of Alabama, USA, without regard to its conflict of law provisions. With respect to any legal disputes between Customer and ADTRAN arising out of or related to these Mosaic Terms, Customer and ADTRAN irrevocably consent to the exclusive personal jurisdiction of the federal and the state courts situated in Madison County, Alabama, USA. The Parties disclaim the United Nations Convention on Contracts for the International Sale of Goods. The Parties waive and disclaim the provisions of the Uniform Computer Information Transactions Act, the Uniform Commercial Code and any other law the provisions of which are implied into this agreement. In the event of any dispute arising out of or related to these Mosaic Terms, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

**15.5. Injunctive Relief.** Notwithstanding any other provision of these Mosaic Terms, any violation by either Party of the other Party's intellectual property or proprietary rights (including those on Confidential Information) will cause irreparable damage for which recovery of money damages would be inadequate, and the aggrieved Party will therefore be entitled to seek timely injunctive relief to protect such Party's rights, in addition to any and all remedies available at law, without the need to post bond.

**15.6. Notice.** Any notice required or permitted to be given by either Party under these Mosaic Terms will be in writing, in English, and delivered or sent by a reputable express mail service or by first class mail (certified or registered) to the other Party at the address provided in a Service Order, or upon agreement by the Parties, by email with confirmation receipt to the address(es) designated by such Party. A Party may change its address at any time on notice. Notices will be effective upon receipt.

**15.7. Force Majeure.** Except for the payment of money, neither Party shall be liable for any failure or delay in performance under these Mosaic Terms which might be due to shortages, insurrection, fires, flood, storm, other weather conditions, explosion, acts of God, war, government action, inability to obtain delivery of parts, supplies or labor, labor conditions (including strikes, lockouts or other industrial disturbances), earthquakes, riots or acts of terrorism, or any other cause which is beyond the reasonable control of such Party.



**15.8. Contractors.** Provider acknowledges that certain services provided hereunder may be enabled or provided by or through certain third parties. ADTRAN may, in its sole discretion, use contractors to perform any of its obligations hereunder. Each Party will be responsible for the acts of its contractors as if performed by that Party.

**15.9. Assignment.** These Mosaic Terms and the rights and obligations hereunder may not be assigned, in whole or in part, by either Party without the other Party's written consent, not to be unreasonably withheld. However, either Party may assign these Mosaic Terms without consent to any wholly owned subsidiary, affiliate or successor to all or substantially all of its business which concerns these Mosaic Terms (whether by sale of assets or equity, merger, consolidation or otherwise), provided the assignee has agreed to be bound by all of the Mosaic Terms. Each Party shall provide prior written notice of any such assignment. Customer shall not assign these Mosaic Terms to any competitor of ADTRAN. These Terms shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties hereto.

**15.10. Entire Agreement.** These Mosaic Terms are the complete agreement between the Parties with respect to the subject matter hereof and supersede any and all prior agreements and understandings. These Mosaic Terms and any Service Orders may be amended only in a writing that refers to these Mosaic Terms or Service Order (as applicable) and is signed by both Parties. Except for Service Orders, no different, additional, pre-printed or adhesion terms of any purchase order, confirmation, click-through or similar form issued by Customer are binding on the Parties unless expressly added as an amendment to these Mosaic Terms and signed by both Parties. The Parties are independent contractors. Except as expressly agreed by the Parties, neither Party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other. The failure of either Party to exercise any right granted herein or to require any performance of any term of these Mosaic Terms or the waiver by either Party of any breach of these Mosaic Terms will not be deemed a waiver of any subsequent breach of, the same or any other term of these Mosaic Terms. If any of the provisions or portions of these Mosaic Terms are determined to be invalid or unenforceable, such invalid provisions or invalid portions will be severed from these Mosaic Terms, and all other provisions hereof will remain in full force and effect.