

Mosaic Software as a Service (SaaS)

Terms and Conditions

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation to our Mosaic platform and services.

This Terms of Use Agreement (the "**Agreement**", as modified from time to time in accordance with the terms of this Agreement) is a legal agreement between the person or entity identified in the Ordering Document ("**Customer**", "**You**", "**Your**") and Mosaic App Limited.

("Mosaic", "Provider" or "Company") (each a "**party**" and collectively the "**parties**") and defines the terms and conditions under which You are permitted to use the Services (as defined below).

In order to use the Services, You must:

1. be at least 18 years old;
2. complete the registration process;
3. agree to this Agreement; and
4. provide true, complete, and up to date contact information.

By using the Services, You represent and warrant that You meet all the requirements listed above. The Company may refuse to provide You with the Services, suspend or close Your account, and change eligibility requirements at any time.

You must act in good faith in using the Platform and comply at all times with the Acceptable Use Policy referred to below. If You or someone acting on Your behalf sets up multiple accounts, deletes and recreates Projects, deletes and re-uploads Customer Materials or unsubscribes and re-subscribes, in order to avoid paying Charges to the Company or to evade Subscription Plan thresholds (or we reasonably believe that You are doing any of these things) then the Company may cancel Your Plans and suspend or terminate Your access to the Platform without notice.

Customer, or otherwise alter or modify Customer's account in an attempt to evade billing thresholds.

1. Definitions and interpretation

1.1 In the Agreement:

"**Acceptable Use Policy**" means the policy at <https://www.mosaic-app.com/acceptable-use-policy/> as updated and amended from time to time;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the entity;

"API Connector/Integration" means any Web-based, on-demand and/or downloadable software that permits the connection and/or interoperation of a third party service/application with the Platform;

"Agreement" means the agreement between the Provider and the Customer for the provision of the Platform, incorporating these terms and conditions (including the Schedules), and any amendments from time to time.

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:00 GMT on a Business Day;

"Charges" means the amounts payable by the Customer to the Provider to use the Platform as set out in his Agreement or on the Website.

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

"Customer's Account" means the Web-based account provided by Company to Customer that enables Users to use the Subscription Services which is accessible to Users via usernames and passwords created and/or assigned by Customer;

"Customer Data" means any data added to the Platform by the Customer, or Users;

"Customer Confidential Information" means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement; and
- (c) the Customer Materials;

"Customer Materials" all works and materials, whether video, document, image, drawing or any other digital file:

- (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to the Provider in connection with the Agreement;

"Data Protection Laws" means as binding on either party or the Services:

- (a) the GDPR in so far as it relates to a business established in the United Kingdom;
- (b) the Data Protection Act 2018
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"Documentation" means the documentation produced by the Provider and made available on the Platform to the Customer specifying how the Platform should be used;

"Effective Date" shall have the meaning set out in Clause 2.2;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, pandemic, riots, terrorist attacks and wars);

"Generic Tools" means the coding, programming techniques, design techniques, UX and UI methodologies, architecture, trade secrets, methodology, APIs, functions, applications, knowledge, experience, skills, templates, other know-how and related Intellectual Property Rights Company uses to provide the Services and the Platform;

"GDPR" means the General Data Protection Regulation, [Regulation \(EU\) 2016/679](#), as it forms part of domestic law in the United Kingdom by virtue of [section 3](#) of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, software, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"IP Claim" shall have the meaning set out in Clause 10.3;

"Login Credentials" means the unique identifying email address and password used by the Users to login to the Platform;

"Minimum Term" means 12 months from the Effective Date;

"Permitted Purpose" means the use of the Platform by the Customer to manage its Project inventory (and CRM data if required);

"Personal Data" has the meaning given to it in Data Protection Laws;

"Plan" or **"Subscription Plan"** means the subscription plans advertised by the Provider on its Website and marketing materials relating to the number. Different Subscription Plans have different Services associated with them which Mosaic may change from time to time;

"Platform" means the software platform known as Mosaic that is owned and operated by the Provider, and that will be made available to the Customer as a service via the internet under the Agreement;

"Privacy Policy" means the Privacy Notice available at <https://www.mosaic-app.com/privacy-policy/>;

"Process" has the meaning given to it in Data Protection Laws and the terms Processor, Processing, Processed and Sub-Processor shall be construed accordingly;

"Project" means a single construction project which can be either a domestic or

commercial project, or phase of a project;

“**Renewal Period**” has the meaning in Clause 15.1;

“**Services**” means all the services provided or to be provided by the Provider to the Customer under the Agreement;

“**Support Services**” means support services provided or to be provided by the Provider to the Customer set out in Schedule 1;

“**Term**” means the term of the Agreement;

“**Third Party Services**” means any software, products, tools, applications, or services that may be used in connection with the Services or Platform that are not owned by Company or its Affiliates;

“**Tracking Technologies**” means the use of proprietary or third party user monitoring and recording technology to support the Provider in providing the Services, such as Cookies, session recordings, mouse tracking software and Customer identification solutions;

“**Upgrades**” means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform;

“**User**” or “**Collaborator**” means any person, other than Company employees or its agents, authorised in writing by the Customer and engaged in providing professional services to Customer, accessing and/or using the Platform through Customer’s Account (including through a Sub-Account) or invited by the Customer to use the Platform in the course of the Customer using the Platform;

“**Website**” means www.mosaic-app.com or its subdomains and public pages.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.

2. Agreement and Term

- 2.1 The Agreement comes into force in accordance with the provisions of Clause 2.2.
- 2.2 In order to enter into the Agreement, the Customer must take the following steps:
 - (i) the Customer must decide which Plan (and extras if required) to select from the pricing menu via the Website or the Platform;
 - (ii) the Customer will then confirm its acceptance of the terms and conditions set out in this Agreement;
 - ((iii)) the Customer will then submit its payment details and the Provider will take the required payment at which point the Agreement will come into force (“**Effective Date**”)
 - (iv) payments will continue to be taken until the customer cancels the Plan via the Website.
- 2.3 Once in force, the Agreement will continue in force for the Minimum Term of the Plan selected and indefinitely thereafter, unless terminated in accordance with the terms of this Agreement.

3. The Platform

- 3.1 The Provider will make the Platform available to the Customer from the Effective

Date.

- 3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clauses 3.4 and 3.5, the Provider hereby grants to the Customer a right to use the Platform for the Permitted Purpose via any standard web browser in accordance with the Documentation during the Term.
- 3.3 The right granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
- (a) the Platform must not be used at any point in time by more than the number of concurrent Users specified in the Agreement, provided that the Customer may add or remove concurrent User licences in accordance with the procedure set out in the Platform;
 - (b) the Platform may only be used by the employees, clients, agents and sub-contractors of the Customer and:
 - (i) where the Customer is a company, the Customer's officers;
 - (ii) where the Customer is a partnership, the Customer's partners; and
 - (iii) where the Customer is a limited liability partnership, the Customer's members;
 - (c) the Customer must comply at all times with the terms of the Acceptable Use Policy, and must ensure that all Users of the Platform agree to and comply with the terms of that Acceptable Use Policy;
- 3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the right granted by the Provider to the Customer under this Agreement to use and access the Platform is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;
 - (b) the Customer must not frame or otherwise re-publish, re-sell or re-distribute the Platform;
 - (c) the Customer must not allow any third party to use, access, or interface with the Platform, whether directly or indirectly through third party systems; and
 - (d) the Customer must not alter or adapt or edit the Platform save as may be expressly permitted by the Documentation.
- 3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.
- 3.6 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.
- 3.7 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.
- 3.8 The Customer must not use the Platform:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4. Support Services and Upgrades

- 4.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform. The Provider shall use reasonable endeavours to provide the Support Services in accordance with the service levels set out in Schedule 1. The Customer acknowledges that the Provider may make non – material changes to the Support Services and service levels from time to time for operational reasons.

5. Customer Materials

- 5.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use, access and share the Customer Materials and the Customer Data on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under the Agreement, and exercising its rights under the Agreement.
- 5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Customer Materials and Customer Data will remain, as between the parties, the property of the Customer.
- 5.3 The Customer warrants and represents to the Provider that (i) the Customer Materials and Customer Data, and their use, access or storage by the Provider in accordance with the terms of the Agreement, and (ii) the integration and access to Third Party Services will not:
- (a) breach any laws, statutes, regulations or legally-binding codes;
 - (b) infringe any person's Intellectual Property Rights or other legal rights; or
 - (c) give rise to any cause of action against the Provider or any third party.
- 5.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 5, or a breach by the Customer of the Provider's Acceptable Use Policy, the Provider may:
- (a) delete or amend the relevant Customer Materials and/or the Customer Data; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to the Platform.
- 5.5 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of the Agreement for the purposes of Clause 15.2.

6. THIRD PARTY SERVICES.

- 6.1 The Platform permits the Customer to integrate with Third Party Services, subject to the User and Project restrictions set out in this Agreement.
- 6.2 The Provider has no liability for any Third Party Services purchased by the Customer (including without limitation, in relation to content, data, Customer Materials stored in such Third Party Services) and the provision of such Third Party Services is governed exclusively by the agreement between the Customer and the relevant vendor of the Third Party Services.
- 6.3 The Customer shall be responsible for ensuring that no viruses or similar devices are transmitted into the Platform via the Third Party Services, and gives the Provider permission to transmit data between the Platform and the Third Party Services to the extent necessary in order to utilise the Platform and integrate with the Third party Services.
- 6.4 The Provider may at any time suspend the access of Third Party Services to the Platform for operational or security reasons.

7. Platform Trials and Free Trials

The Provider may, in certain circumstances, set up a Free Platform Trial. The Customer may access the Free Platform Trial for an agreed period on a limited, non-exclusive, non-transferable, revocable, free trial basis for evaluation purposes only, during which time all of the provisions of this Agreement shall apply, save as follows:

- (a) the Customer shall have no obligation to pay any Charges in respect of the Free Platform Trial;
- (b) the Company may terminate Free Platform Trial accounts or any features of the Services offered pursuant to a Free Platform Trial at any time at the Company's sole discretion with no obligations to the customer or the users of such an account.

8. Charges

- 8.1 Charges are payable in accordance with the terms on the Website and are dependent on the Subscription Plan purchased by the Customer. All Charges are payable in advance.
- 8.2 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT at the prevailing rate will be payable by the Customer to the Provider in addition to the principal amounts.
- 8.3 All Charges must be paid by credit or debit card unless agreed otherwise in writing by the Provider.
- 8.4 Charges associated with each Subscription Plan are based on Customer's Subscription tier. Customer's Subscription Plan tier at any given time is determined by the number of unique Projects in the Customer's Account (including Projects that have been archived, excluding those that have been deleted) also known as "Live Projects", and storage space utilized, provided that if Customer exceeds the limits of its Subscription tier at any time, Company will upgrade the Customer's account to the next appropriate Subscription tier and charge Customer the applicable fees for that Subscription Tier for the remainder of the Term and any renewals thereof. Customer has the sole responsibility for updating its Live Projects and document storage to ensure Customer is being charged at the appropriate Subscription tier.
- 8.5 If a User accesses, uses, or activates any features which are reserved for a higher-priced Subscription Plan (including exceeding where Customer exceeds their Project or storage limits), Company may, in its absolute discretion, upgrade Customer's account to the appropriate higher-priced Subscription Plan for the remainder of the Term and any renewals thereof. Customer agrees to pay Charges associated with the upgraded Subscription Plan for the remainder of the Term, and any renewals of the Term.
- 8.6 If the Customer does not pay any amount properly due to the Provider under or in connection with the Agreement, the Provider may:
 - (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of the Bank of England from time to time (which interest will accrue daily and be compounded quarterly); and/or
 - (b) claim costs and connected expenses associated with recovering the amounts due from the Customer.
- 8.7 Charges for renewal terms (i.e. after the Minimum Term has expired) will be set at the Company's then-current pricing and Customer is responsible for reviewing the Charges charged by Company prior to renewal. Upon expiration of the Minimum Term, Customer will automatically be charged for renewal unless Customer terminates this Agreement in accordance with the terms of this Agreement.

8.8 The Provider may suspend access to the Platform or terminate this Agreement if any amounts due to be paid by the Customer to the Provider under the Agreement are overdue by more than 28 days. Any dispute to a charge on Customer's invoice must be made in writing with specificity within 60 days after the date of the invoice that initially contained the disputed charge.

8.9 The Company will not provide refunds or credits for partial or unused periods of service.

9. Warranties

9.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.

9.2 The Provider warrants and represents to the Customer:

(a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;

(b) that the Platform will operate substantially in accordance with the Documentation (subject to any Upgrades) and the Specification, when used in accordance with this Agreement and the Acceptable Use Policy; and

(c) the Platform (excluding for the avoidance of doubt the Customer Materials) will not infringe any person's Intellectual Property Rights or other legal rights in England and Wales and under English Law.

9.3 The Customer acknowledges that:

(a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;

(b) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible on the Website; and

(c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Platform and the Customer must satisfy itself that its use of the Platform and storage of Customer Materials on the Website complies with all legal and regulatory requirements applicable to the Customer in its use of the Platform.

9.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

10. Indemnities

10.1 The Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clauses 5.3 or 13.2.

10.2 The Customer agrees to defend, indemnify and hold Company, its officers, directors, shareholders, successors in interest, employees, agents, subsidiaries and affiliates harmless from any claims, losses, damages, liabilities, settlements, and expenses (including, but not limited to attorney fees) by a third party related to, arising from, or connected with Customer clients and/or User/ Collaborator access and/or use of the Services or the Platform or in connection with the Customer Data

and/or the Customer Materials.

10.3 Subject to Clauses 10.4 and 10.5 , the Provider shall:

- (a) defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Platform infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and
- (b) pay, subject to Clause 10.5, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.

10.4 The provisions of Clause 10.3 shall not apply unless the Customer:

- (a) promptly (and in any event within 7 days) notifies the Provider upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
- (b) makes no comment or admission and takes no action that may adversely affect the Provider's ability to defend or settle the IP Claim;
- (c) provides all assistance reasonably required by the Provider subject to the Provider paying the Customer's reasonable costs; and
- (d) gives the Provider sole authority to defend or settle the IP Claim as the Provider considers appropriate.

10.5 The provisions of Clause 12 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under Clause 10.3

10.6 In the event of any IP Claim, the Provider may elect to terminate the Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Charges paid in advance. This Clause 10.6 is without prejudice to the Customer's rights and remedies under Clause 10.3.

10.7 The Provider shall have no liability or obligation under Clause 10.3 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:

- (a) any modification of the Platform (or any part);
- (b) any Customer Materials or integration with Third Party Services;
- (c) any Platform Trial Services (or any Support Services provided in connection with them);
- (d) any open source software;
- (e) any breach of the Acceptable Use Policy or other use restrictions by the Customer;

10.8 The provisions of this Clause 10 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

11. Intellectual Property

11.1 All Intellectual Property Rights in the Platform, and the Generic Tools shall, as between the parties, be the exclusive property of the Provider.

- 11.2 Customer acknowledges and agrees that all rights, title and interest in and to Services, the Platform and the Generic Tools are the exclusive property of Company or its affiliates, licensors or suppliers. Unless stated otherwise, Company and its licensors retain all Intellectual Property Rights in and to the Services, Platform and Generic Tools including, without limitation, all logos, graphics, software, algorithms, functionality, templates, databases and content (other than Customer Materials and Customer Data) included in or comprising the Services or the Platform. All rights not expressly granted herein are reserved by Company. The Platform, the Generic Tools and Services are protected by copyright, trademark, and other UK and international laws. The Provider reserves the right to use any feedback or comments on the Platform from the Customer, without any obligation or liability to the Customer
- 11.3 Notwithstanding anything to the contrary in this Agreement, Company may monitor, record, analyze sessions, and compile statistical data, being analysis of how the Customer and its Users use the Platform Customer agrees that Company may make such statistical data publicly available provided it is de-identified and aggregated so it does not identify the Customer. Company and/or its licensors own all right, title and interest in and to the statistical data and all related software, technology, documentation, and content provided in connection with the statistical Data, including all Intellectual Property Rights in the foregoing.
- 11.4 Unless otherwise agreed by the parties in writing, Customer hereby agrees that Company may reference Customer in marketing and public relations materials, including a press release announcing Customer as a customer. Customer hereby grants Company a nonexclusive, worldwide license to use and display Customer's trademarks, trade names and logos in connection with the foregoing.

12. Limitations and exclusions of liability

- 12.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Agreement:
- (a) are subject to Clause 12.1; and
 - (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 12.3 The Provider will not be liable for:
- (a) any loss of profits, income, revenue, use, production or anticipated savings,
 - (b) any loss of business, contracts or commercial opportunities;
 - (c) any loss of or damage to goodwill or reputation.
- 12.4 Subject to the Provider's obligations under Data Protection Laws, the Provider will not be liable in respect of any loss or corruption of any data, database or software.
- 12.5 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

- 12.6 The Provider's total aggregate liability in relation to any event or series of related events under or in connection with this Agreement (in tort, statute, contract, negligence, or otherwise) will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.
- 12.7 Customer understands and acknowledges that it is not possible to guarantee that the performance of the Services or the access to the Platform will be successful in producing any specific results. In particular, Customer further acknowledges that it is not possible for Company to warrant that the Services or Platform guarantee
- a) cost savings;
 - b) time saving; or
 - c) compliance of outputs.
- Customer hereby acknowledges and agrees that Company will not be liable for the failure of the performance of the Services or Platform to generate any advertised, expected or useful results or to enable the Customer to comply with applicable laws.
- 12.8 Company does not guarantee the continued availability of any external API connections or integrations. Company may discontinue any API Connector/Integration at any time at its sole discretion. Customer should not base purchase decisions on the availability of any such API Connector/Integration. Customer acknowledges and agrees that Customer may be able to use the connected application to access Customer Materials in Customer's account and/or transmit data out of Customer's account. To the extent data is transmitted out of the Services or the Platform, Company is not responsible for the continued availability, privacy, security or integrity of that data.
- 12.9 The availability of the Platform or the Services does not constitute professional, financial, health & safety, legal or tax advice.

13. Data protection

- 13.1 Nothing in this Clause 13 is intended to amend or replace a party's obligations under Data Protection Laws and each party agrees that it shall not act in such a way so as to cause the other to breach such obligations.
- 13.2 The Customer warrants and represents to the Provider any Personal Data included within Customer Data has been lawfully collected, processed and transferred to the Provider under Data Protection Laws.
- 13.3 The parties acknowledge that in providing the Services the Provider will act as a Processor on behalf of the Customer. Annex 1 (Data Processing Information) to this Agreement sets out the subject-matter and duration of Processing, the nature and purpose Processing, the types of personal data Processed and the categories of affected data subject.
- 13.4 To the extent that that the Provider Processes Personal Data on behalf of the Customer during the course of providing the Services pursuant to the Agreement, then the Provider agrees that with respect to such data it shall:
- (a) Process all Personal Data supplied or provided by the Customer or collected or otherwise obtained on the Customer's behalf only on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country. The Customer's initial instructions are as detailed in the Agreement and subsequently as amended in writing from time to time;
 - (b) inform the Customer if in its reasonable opinion any Customer instruction infringes Data Privacy Laws and refrain from Processing in the absence of documented instructions, unless Processing is required under applicable law or regulation to which the Provider is subject in which case the Provider shall to the maximum extent permitted and within a reasonable amount of time inform the Customer of that legal requirement before Processing;

- (c) take all such steps necessary to ensure that any persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (d) implement appropriate technical and organizational measures to protect Personal Data;
- (e) only use those Sub-Processors as are authorized in advance by the Customer and notify the Customer in advance of any intended changes concerning the addition or replacement of approved Sub-Processor(s), thereby allowing the Customer a reasonable opportunity to object to such changes. Where the Customer does not respond to the notice within 5 Business Days of receipt then the Customer shall be deemed to agree to the proposed change, but in any case where the Customer does so object then the parties agree to negotiate in good faith in nominating a suitable replacement;
- (f) when instructing a third party Sub-Processor, enter into an agreement with that Sub-Processor which includes substantially the same data protection obligations as are included within the terms of this Agreement. The Company may transfer Personal Data outside the UK or the EEA to Sub-Processors, but only for as long as the Company puts in place appropriate safeguards to protect the Personal Data as may be required by Data Protection Laws from time to time;
- (g) taking into account the nature of the Processing and at the sole cost of the Customer, assist and provide support to the Customer by appropriate technical and organisational measures, insofar as this is possible, to enable the Customer to comply with its obligations to respond to statutory data subject requests submitted to the Customer under Data Protection Laws;
- (h) taking into account the nature of the Processing and the information available, at the sole cost of the Customer provide such reasonable commercial assistance to the Customer as is necessary to enable it to comply with its obligations relating to the security of Processing, data breach notifications, data protection impact assessments and prior consultations with supervisory authorities;
- (i) upon termination of Services under this Agreement and at the election of the Customer, either promptly return all Personal Data to the Customer and delete any copies, or permanently erase such data, unless required by applicable law of regulation to retain it;
- (j) upon becoming aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to the Personal Data being Processed by or on behalf of the Customer in the course of providing the Services, promptly (and in any event within 72 hours) notify the Customer of the breach and, where possible, provide sufficient details of the breach to enable the Customer to comply with applicable reporting obligations pursuant to Clause (h);
- (k) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this Clause 13.4, including in allowing for and contributing to audits and/or inspections conducted by the Customer or a third party mandated on its behalf, provided that the Customer's right of audit shall be satisfied by:
 - (i) the Provider providing to the Customer an audit report that has been produced by a registered and independent external third party auditor within no more than 18 months before the time that an audit request is initiated by the Customer pursuant to this Clause 13.4(k) and that adequately demonstrates the sufficiency of the Provider's data security controls in line with industry practices; or
 - (ii) where the Provider is unable to provide the information described in Clause 13.4(k), allowing the Customer or a nominated third party

reasonable access to the Provider's facilities and data security practices, at a frequency no greater than once per 12 month rolling period and provided in each case that the Customer shall (i) arrange in advance a mutually agreed upon time, place and scope for conducting the audit which shall be during normal business hours; (ii) limit the audit to systems and material relevant to the Services, taking any steps necessary to minimize the impact of the audit on the Provider's usual course of business operations; (iii) ensure that any third party mandated to participate in the audit owes existing contractual obligations of confidentiality to the Customer; (iv) immediately notify the Provider upon discovering any instance of non-compliance with Data Protection Laws; and (v) reimburse the Provider at reasonable professional rates, as determined by the Provider and made available in advance upon request.

- 13.5 The Customer grants the Provider a general authorization to use those Sub-Processors as are included in its privacy notice on the Web Site. For the avoidance of doubt, the Provider shall remain fully liable to the Customer for the acts and omissions of any appointed Sub-Processors.

14. Confidentiality

- 14.1 The Provider will:

- (a) keep confidential and not disclose Customer Confidential Information to any person save as expressly permitted by this Clause 14;
- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and

- 14.2 Customer Confidential Information may be disclosed by the Provider to its officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Customer Confidential Information disclosed.

- 14.3 The obligations set out in this Clause 14 shall not apply to:

- (a) Customer Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer;
- (c) Customer Confidential Information that is received by the Provider from an independent third party who has a right to disclose the relevant Confidential Information; or
- (d) Customer Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the Provider must where permitted by law give to the Customer prompt written notice of the disclosure requirement.

- 14.4 Customer agrees to keep User login credentials secret and protected. User login credentials cannot be shared or used by more than one User. Customer is solely responsible for keeping Customers' and/or Users' account name, password, and any other login credentials confidential. Customer is responsible for any and all activities that occur within Customer's account, whether authorized by Customer or not. Customer must notify Company immediately of any unauthorized access or use of Customer's account. Company will not be held responsible or liable for any losses due to lost or otherwise compromised passwords. Customer will be liable for all payable events and charges incurred by activity within Customer's account whether authorized by the Customer or not.

15. Term and Termination

- 15.1 This Agreement commences on the Effective Date, continues for the Minimum Term, and subject to earlier termination in accordance with this Agreement, continues for subsequent 12 month periods (each a "Renewal Period").
- 15.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party commits any material breach of any term of the Agreement, and:
- (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so.
- 15.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 15.4 Either party may terminate the Agreement by giving at least 30 days' written notice of termination to the other party, such notice to expire on the last day of the Minimum Term or the last day of each Renewal Period (as applicable).
- 15.5 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate the Agreement by giving at least 30 days' written notice of termination to the Customer at any time.
- 15.6 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.

16. Effects of termination

- 16.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1,5.3,8,10, 11,12,14,16, 17 and 19.

- 16.2 Termination of the Agreement will not affect either party's accrued liabilities or rights as at the date of termination.
- 16.3 Subject to Clause 16.4, within 30 days following the termination of the Agreement, the Provider will:
- (a) irrevocably delete from the Platform all Customer Confidential Information; and
 - (b) irrevocably delete from its other computer systems all Customer Confidential Information, and return to the Customer or dispose of as the Customer may instruct all documents and materials containing Customer Confidential Information.
- 16.4 The Provider may retain any document (including any electronic document) containing the Customer Confidential Information after the termination of the Agreement if:
- (a) the Provider is obliged to retain such document by any law or regulation or other rule enforceable against the Provider; or
 - (b) the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the Provider.
- 16.5 Subject to Clause 16.6, on termination of this Agreement, the Customer shall no longer be permitted to use or access the Platform, except to download Projects or Customer Materials. The Platform allows the Customer to export its Customer Materials from the Platform, Project by Project, during the term of this Agreement. On termination of this Agreement, the Provider will allow the Customer sixty (60) days after termination of the Agreement to remove the Customer Materials and Projects from the Platform.
- 16.6 If the Customer requests extended storage on the Platform the Company may agree to provide that for a period of time, subject to the payment of storage charges.

17. Notices

- 17.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by fax or email, for the attention of the relevant person, and to the relevant address or fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Provider:

Mosaic App Trading Limited, Suite 2, Gateway House, Styal Road, Manchester, M22 5WY, Tel 0333 577 0125, e-mail support@mosaic-app.com

The Customer:

The addressee, address, email and telephone set out in the Statement of Services.

- 17.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by recorded signed-for post, 48 hours after posting; and
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

18. Force Majeure Event

- 18.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 18.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
- (a) forthwith notify the other; and
 - (b) will inform the other of the period for which it is estimated that such failure or delay will continue.
- 18.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

19. General

- 19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 19.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 19.3 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 19.4 Each party hereby agrees that the other party may assign any or all of its contractual rights and/or obligations under the Agreement to any Affiliate of the assigning party or any successor to a project which has stored documents in the Platform, with the prior consent of the other party not to be unreasonably withheld or delayed. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 19.5 The Provider may sub- contract its obligations under this Agreement.
- 19.6 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 19.7 Subject to Clause 10.1:
- (a) the Agreement and the Acceptable Use Policy, the Specification, and the Support Services referred to in herein constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 19.8 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

Schedule 1

Support Services

1. Introduction

1.1 In this Schedule:

"**New Functionality**" means new functionality (determined by the Provider) that is introduced to the Platform by an Upgrade; and

"**Protected Functionality**" means [functionality that represents the core purpose of the Platform, namely the storage of user materials that relate to Construction Design Management, and the ability for all invited Users to access those documents free of charge]

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

2.1 The Provider will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:

- (a) assisting the Customer with the configuration of the Platform and the integration of the Platform with the Customer's other systems;
- (b) assisting the Customer with the proper use of the Platform; and/or
- (c) determining the causes of errors and fixing errors in the Platform.

2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support Services through the helpdesk, and all such requests must include sufficient information to allow the Provider to give the Customer a satisfactory resolution to its request.

2.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.

3. Response and resolution times

3.1 The Provider will:

- (a) use all reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
- (b) use all reasonable endeavours to resolve issues raised by the Customer,

3.2 The Provider will determine, acting reasonably, in to which severity category an issue raised through the Support Services falls.

3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

4. Limits on Support Services

4.1 Where the total person-hours spent by the Provider performing the Support Services under Paragraphs 2 and 3 during any calendar month exceed 10 hours, then:

- (a) the Provider will cease to have an obligation to provide those Support Services to the Customer during that period; providing that
- (b) the Provider may agree to provide additional such Support Services to the Customer during that period, but the provision of such services will be

subject to payment by the Customer of additional Charges at the Provider's standard hourly rates from time to time.

- 4.2 The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:
- (a) the improper use of the Platform; or
 - (b) the use of the Platform otherwise than in accordance with the Documentation.

5. Upgrades

- 5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may, subject to Paragraph 5.2, result in changes the appearance and/or functionality of the Platform.
- 5.2 No Upgrade shall disable, delete or significantly impair the Protected Functionality.
- 5.3 The Provider will give to the Customer reasonable prior written notice of the application of any significant Upgrade to the Platform. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.
- 5.4 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:
- (a) the Upgrade introduces New Functionality to the Platform;
 - (b) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;
 - (c) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and
 - (d) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

6. Uptime commitment

- 6.1 The Provider shall use all reasonable endeavours to ensure that the Platform is available 98.5% of the time during each calendar month, subject to Paragraph 8, and excluding any downtime that is caused by events beyond the reasonable control of the Provider.

7. Back-up and restoration

- 7.1 Subject to Paragraph 7.2, the Provider will make back-ups of the Customer Materials stored on the Platform on a daily basis, and will retain such back-ups for at least 10 days; and
- 7.3 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use all reasonable endeavours to promptly to restore the Customer Materials from the most recent available back-up copy, but shall have no further liability to the Provider for lost or corrupted data, other than under Clause 13 of the Agreement.

8. Scheduled maintenance

- 8.1 The Provider may suspend access to the Platform in order to carry out scheduled

maintenance, such maintenance to be carried out and such suspension to be for no more than 8 hours in each calendar month.

- 8.2 The Provider will use reasonable endeavours to give the Customer at least 14 days' written notice of scheduled maintenance.
- 8.3 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the purposes of Paragraph 6.

Annex 1

Data Processing Information

Subject matter of the processing

The processing is necessary for the Provider to provide the Platform and functionality to the Customer and for the Customer to access and use the Platform. The processing is necessary for the Provider to provide the Services under the Agreement.

Nature and purpose of the processing

Storage of Personal Data in the Platform during this Agreement and until the Customer exports it from the Platform.

Duration of the processing

The processing will last for the duration of the Agreement and for such period after the expiry or termination of the Agreement as is necessary to allow the Parties to comply with their legal obligations.

Types of personal data

Name, address, work title, and phone number

Categories of data subjects

The personal data transferred concern the following categories of data subjects:

1. Individuals who work on Projects and are given access as part of their work.
2. Individual contractors, consultants and advisers.
3. Employees.

Schedule 5
List of Approved Sub-Processors

Amazon Web Services - <https://aws.amazon.com/blogs/security/all-aws-services-gdpr-ready/>

User.com aka UserEngage - <https://docs.user.com/gdpr-in-userengage/>

Fullstory - <https://help.fullstory.com/hc/en-us/articles/360020828153-FullStory-and-GDPR-Overview>

Google – Analytics & Tag Manager –
<https://www.google.com/policies/privacy/>

Cloudflare - <https://www.cloudflare.com/en-gb/gdpr/introduction/>