

TERMS OF SERVICE MOSAIQ INSIGHTS

Last updated November 2023

1 About this document

- 1.1 **Overview:** These terms and conditions ('**Terms**') apply to the use of and/or subscription to the following products (each a '**Product**' and together the '**Products**')
- a the software platform known as MOSAIQ INSIGHTS; and
 - b the API connection to the MOSAIQ INSIGHTS analytics data feed.
- 1.2 **Who we are:** The Products are made available by Snapper Services Limited, a company incorporated in New Zealand under company number 1891262 ('**Snapper**', '**we**', '**us**', '**our**') to an end customer to whom Snapper or a Reseller grants access to the Products (in these Terms, referred to as '**Customer**', '**you**', '**your**').
- 1.3 **No other terms apply:** These Terms apply to the exclusion of any terms which you purport to apply between you and Snapper relating to your use of the Products.
- 1.4 **Subscription through a Reseller:** If you subscribe to the Products through a Reseller rather than directly from us:
- a you will be subject to:
 - i the terms and conditions governing that arrangement;
 - ii these Terms;
 - b we will not be liable to you in connection with your arrangements with the Reseller.

2 Updates

- 2.1 **How Snapper may update:** Snapper may update this document by:
- a posting an updated document at mosaiq.co; and/or
 - b notice in writing to Customers issued in accordance with clause 16.
- 2.2 **Effective date of updates – Existing Customers:** Any updates made by Snapper in accordance with clause 2.1 will take effect as between Snapper and any existing Customer:
- a in the case of non-material updates (such as grammatical changes), the inclusion of changes to accommodate the introduction of new services or features, or changes which a reasonable person would consider are beneficial to Customers, immediately;
 - b in the case of all other updates, upon the next renewal of that Customer's subscription to the Products (being the first day of the next calendar month after the month in which this document is updated).

3 Definitions and interpretation

3.1 Definitions: In these Terms, unless the context otherwise requires:

'Additional Services' means any services associated with adding and removing features or functionality of the Products, or with any development requested by you and contemplated by an Additional Work Order (including for the purposes of enabling you to use the Products to generate bespoke reports), in each case which are outside the scope of the onboarding services set out in clause 5.

'Additional Work Order' means each work order entered into in accordance with clause 8.

'Additional Work Order Request' has the meaning given to it by clause 8.1.

'Applicable Law' means any legislation or regulation which is binding on a party.

'Bank Bill Rate' means that New Zealand 90-Day Bank Bill Rate (BKBM) published by the Reserve Bank of New Zealand at <https://www.rbnz.govt.nz/statistics/series/exchange-and-interest-rates/wholesale-interest-rates>, or if that rate ceases to be published by the Reserve Bank of New Zealand, its successor rate (or the equivalent mid-rate for 90 day interbank lending).

'Business Day' means a day (other than Saturday or Sunday) on which registered banks are open for business in Wellington, New Zealand, but excludes any day in the period from 24 December in any year to 5 January in the following year (both inclusive).

'Compensation Credits' has the meaning given to it in the Service Level Schedule.

'Confidential Information' means:

- a all commercial, financial, and/or technical information, trade secrets, products, operations, processes, and unpublished information relating to a party's operations, business, or prospective business;
- b any other information imparted to a party by or on behalf of the other party or otherwise obtained under or in connection with the Products and which is of a confidential nature (whether or not expressly designated as imparted in confidence).

'Data Processing Schedule' means the 'Data Processing Schedule – Mosaic Insights' published by Snapper at mosaiq.co, as Snapper may update from time-to-time.

'Discloser' has the meaning given to it by clause 14.1.

'Dispute' means any dispute or difference which may arise between any parties concerning the interpretation or application of these Terms, or otherwise concerning your use of and/or access to the Products.

'Fees' means the fee payable by you to us (if any) for your access to the Products and any other charges that we may charge in connection with the Products, as is notified to you from time to time.

'First-Line Support' means the 'First-Line Support' services described in the Support Services Schedule.

'Intellectual Property Rights' means:

- a all intellectual property rights throughout the world, including rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, and circuit layouts (in each case, whether registered or unregistered); and
- b any application or right to apply for registration of any of the foregoing rights.

'Insolvency Event' means:

- a an order is made or resolution is passed for your liquidation;
- b a receiver is appointed in respect of your or any of your assets;
- c you enter into voluntary administration;
- d you enter into a compromise with any of your creditors;
- e you enter into statutory management; or
- f any analogous demand, appointment or procedure is instituted or occurs in relation to you, in any jurisdiction.

'Liability' means, in respect of a Third Party IP Claim:

- a costs, expenses, damages, liabilities, judgments, fines, penalties (whether civil, criminal or otherwise) incurred in defending or settling the Third Party IP Claim;
- b amounts paid or payable in settlement of the Third Party IP Claim, including all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing; and
- c all legal costs and expenses incurred (including solicitor-client costs) in connection with the defence or settlement of the Third Party IP Claim.

'Mosaicq Brand' means any trade marks or service marks used to identify Mosaicq Insights as the name of the Products, in whatever form and however stylised.

'Order Form' has the meaning given to it by clause 4.1.

'Pricing Schedule' means the 'Pricing Schedule – Mosaicq Insights' published by Snapper at mosaiq.co, as Snapper may update from time-to-time.

'Product' has the meaning given to it by clause 1.1.

'Products IPR' means all Intellectual Property Rights incorporated in the Products and/or any materials we provide you in connection with your use of the Products.

'Recipient' has the meaning given to it by clause 14.1.

'Renewal Subscription Term' has the meaning given to it by clause 4.3b.

'Second-Line Support' means the 'Second-Line Support' services described in the Support Services Schedule.

'Service Levels' means the 'Service Levels' set out in the Service Level Schedule.

'Service Level Schedule' means the 'Service Level Schedule – Mosaiq Insights' published by Snapper at mosaiq.co, as Snapper may update from time-to-time.

'Support Services Schedule' means the 'Support Services Schedule – Mosaiq Insights' published by Snapper at mosaiq.co, as Snapper may update from time-to-time.

'Third-Line Support' means the 'Third-Line Support' services described in the Support Services Schedule.

'Third Party IP Claim' means a proceeding or claim against us alleging that the incorporation of any materials in the Products which are provided to us by you or on your behalf infringes the Intellectual Property Rights or any other rights of any other person.

3.2 **Rules of Interpretation:** In interpreting these Terms, the following rules must be applied unless the context otherwise requires:

- a **Headings:** Clause and other headings are for reference only and are not an aid in interpretation.
- b **Statutes:** References to statutory provisions include references to all regulations, orders, rules or notices made under that statute, and references to a statute or regulation are references to those statutes or regulations as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

3.3 **Inconsistency:** If there is any inconsistency between the documents that form part of these Terms, the following descending order of precedence applies (in that provisions or documents will prevail over provisions or documents listed below them, to the extent of any inconsistency):

- a these Terms; and
- b any other documents incorporated by reference into these Terms, including:
 - i the Data Processing Schedule;
 - ii the Service Level Schedule;
 - iii the Pricing Schedule; and
 - iv the Support Services Schedule.

4 Subscription to the Products

4.1 **How to subscribe:** To subscribe to the Products, you (or a Reseller acting on your behalf) must submit a valid order form ('**Order Form**') to us, which:

- a is an offer by you to subscribe to the Products (or to one of the Products);
- b if accepted by us will form a contract between you and us, on these Terms and those in the Order Form, which will apply to your subscription and access to the Products.

4.2 **Pricing:** The Fees payable by you in connection with your access to the Products will be:

- a if you subscribe through a Reseller, as notified by the Reseller to you; or
- b for all other Customers, as set out in the Pricing Schedule.

4.3 **Term and automatic renewal:** Your subscription term:

- a commences on the date specified in the Order Form;
- b unless earlier terminated in accordance with clause 12, continues on a month-to-month basis unless either you or we terminate your subscription by giving the other no fewer than 10 Business Days' notice to terminate.

5 Onboarding

We will undertake the following onboarding services:

- a the establishment of your subscription to the Products;
- b the establishment of an interface between that subscription and your existing data feeds, to enable the ingestion of data from those feeds; and
- c carrying out one scheduled online training session with you.

6 Access to the Products

6.1 **Availability and Service Levels:** We will make the Products available to you to use, on a non-exclusive basis, in accordance with:

- a these Terms; and
- b the Service Level Schedule.

6.2 **Failure to meet the Service Levels:** Your sole remedy against us arising from or in connection with our failure to meet the Service Levels or otherwise in connection with your access to the Products is the application by us of Compensation Credits in accordance with the Service Level Schedule.

6.3 **No other warranties:** We give no warranties and make no representations (including any statutory warranties other than those which we are not permitted to exclude under law, and any other warranties that might be implied) in connection with the Products or your use of the Products, other than the warranties and representations set out in these Terms (including in the Service Level Schedule).

6.4 **Revocation or suspension:** We may revoke or suspend your access to the Products, without notice and without incurring liability to you:

- a where we reasonably consider that:
 - i your access is being misused or has been compromised;
 - ii to do so is desirable to protect the security and integrity of the Products generally, and/or any systems underpinning the delivery of the Products;
- b to undertake maintenance (schedule or otherwise) of the Products generally, and/or any systems underpinning the delivery of the Products;
- c if required to do so by a third party on whom we rely for the provision of the Products.

6.5 Restrictions on use: You must not:

- a reverse engineer, disassemble, modify, decompile, decode, translate, or make any derivative works from the Products, or attempt to do so;
- b attempt to learn the source code, structure, algorithms, or internal ideas underlying the Products;
- c use the Products to store or transmit any viruses, software routines, or other code designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware, or data, or to perform any other harmful actions;
- d gain access to the Products or any of its functionality (including any data or other information made available through the Products) which you do not have our authority to access, or attempt to do so;
- e copy, frame, mirror, alter, modify, transmit or reproduce the Products or any of its functionality, or attempt to do;
- f use the Products in a way that:
 - i breaches, or causes us to breach, Applicable Law; or
 - ii infringes any person's Intellectual Property Rights; and
- g remove, alter, or obscure the Mosaiq Brand, or any proprietary or copyright notices which we have configured the Products to display.

7 Support

7.1 New releases and updates: You must implement, at our request:

- a maintenance releases;
- b new features; and/or
- c new versions,

of the Products (to the extent such releases, features or versions are not automatically deployed), and we may by notice to you cease to provide support in respect of where you have failed to implement a release, feature or version when reasonably requested to do so.

7.2 First-Line Support: If:

- a you subscribe to the Products through a Reseller, the Reseller will be responsible for providing you with the First-Line Support;
- b you subscribe to the Products directly through us, we will provide you with the First-Line Support in respect of your use of the Products in accordance with the Support Service Services Schedule.

7.3 Second-Line Support and Third-Line Support: We will provide you with the Second-Line Support and the Third-Line Support in accordance with the Support Services Schedule, provided that where you subscribe to the Products through a Reseller, you may only access the Second-Line Support and the Third-Line Support through that Reseller.

8 Additional Work Orders

8.1 **Instigation:** If:

- a you wish for us to carry out any Additional Services; and/or
- b you require assistance to import, migrate or transfer any Customer Data,

either you or we may by notice to the other party ('**Additional Work Order Request**') request that the parties enter into an Additional Work Order.

8.2 **Form of Additional Work Order:** Snapper will, within 20 Business Days after receiving or submitting an Additional Work Order Request, prepare the form of Additional Work Order to give effect to the Additional Work Order Request, which will specify:

- a the nature of the Additional Services required;
- b the indicative timeframes by which the Additional Services are to be completed; and
- c the applicable Fees.

8.3 **Action on receipt of an Additional Work Order:** Upon receipt of a proposed Additional Work Order under clause 8.2, you:

- a in the case of an Additional Work Order Request made by you, may withdraw the Additional Work Order Request; or
- b in the case of an Additional Work Order Request made by us, must not unreasonably refuse to implement the Additional Work Order Request contemplated by, and in accordance with, the proposed Additional Work Order.

8.4 **Status of negotiations:** No Additional Work Order, nor any obligation to perform any Additional Services contemplated by an Additional Work Order, will be binding on us unless:

- a the Additional Work Order is signed by both parties; or
- b we have started performing the Additional Services.

8.5 **Additional Work Orders incorporated into this agreement:** Each Additional Work Order, once signed by both parties, will be governed by these Terms and the terms of the Additional Work Order.

9 Invoicing and payment

9.1 **Invoicing and payment:** If:

- a you subscribe to the Products through a Reseller, the Reseller will be responsible for invoicing you for the Fees, and you must pay the Fees to the Reseller;
- b you subscribe to the Products directly from us:
 - i we will invoice you for the Fees monthly in arrears (less any Compensation Credits to which you are entitled);
 - ii you must pay each invoice issued by us by no later than 30 days after the date of invoice.

9.2 **Failure to pay:** If you do not pay the full amount of an invoice when due, without limiting our rights under clause 12.1b:

- a we may charge late payment interest on the outstanding amount:
 - i at a rate equal to the Bank Bill Rate plus 5% per annum, compounding monthly; and
 - ii for a period which starts on the date the amount falls due for payment and ends on the date you pay the amount outstanding in full; and
- b we may recover from you all costs of recovery we incur in connection with your late payment.

10 Data Protection Schedule

The Data Protection Schedule applies to your access to and use of the Products.

11 Liability

11.1 **Exclusion:** We will not be liable to you whether in contract, tort (including negligence), breach of statutory duty or otherwise, under or in connection with these Terms, your use of the Products (including any inability to use the Products), and/or the performance of any Additional Services for any of the following:

- a any loss or damage arising from any failure of systems, hardware, software, communications equipment, networks or other equipment used by you to access the Products;
- b any loss or damage caused by or arising from a distributed denial-of-service attack, viruses, or other technologically harmful material that may infect or corrupt your computer hardware, software, data or devices arising from your use of the Products;
- c any loss of the use of money, loss of anticipated savings, loss of bargain, loss of revenue, loss of opportunity, loss of business, loss of profit, loss of goodwill or loss of reputation (in each case, whether direct or indirect);
- d loss or corruption of your data held on the Products;
- e any indirect or consequential loss; and/or
- f any loss or damage arising as a result of any third party bringing a claim in respect of any of the above types of loss.

11.2 **Limitation:** Our aggregate liability to you due to, under and/or arising out of or in connection with these Terms, your use of the Products (including any inability to use the Products) and/or the performance of any Additional Services in contract, tort (including negligence), breach of statutory duty or otherwise, in respect of any and all claims, will not exceed the aggregate amount of the Fees actually paid by you in the 12-month period prior to the date on which the event giving rise to our liability occurs.

12 Early termination

12.1 **Termination:** Without limiting our rights under clause 6.4, we may terminate your access to the Products immediately:



- a if you breach any of your material obligations under these Terms, including your obligations under clause 6.5 **(Restrictions on use)**;
- b if you fail to pay any Fees payable to us when due;
- c if you suffer an Insolvency Event;
- d if we elect to discontinue the Products.

12.2 **Manner of termination:** If we terminate your access to the Products under clause 12.1, we may do so by suspending or revoking your account, without notice to you.

12.3 **Effect of termination:** If we terminate your access to the Products under clause 12.1:

- a you will immediately cease to have the right to use the Products; and
- b if we elect to discontinue the Products in accordance with clause 12.1d other than with effect from the last calendar day of a month, we will give you a pro-rated refund (based on the number of days remaining in the month) of any monthly Fees payable to us in advance in connection with your use of the Products.

13 Intellectual Property Rights

13.1 **Ownership:** As between you and us, all right, title, and interest in the Products IPR will remain in the ownership of, or will vest in (upon its creation), us (or our licensors).

13.2 **Licence:** Without limiting clause 13.1, we hereby grant to you a non-exclusive, perpetual, royalty-free licence of the Products IPR solely to the extent necessary to enable you to use the Products in accordance with these Terms.

13.3 **Limited warranty:** So far as we are aware, the Products and your use of the Products in accordance with these Terms does not, and will not, infringe the Intellectual Property Rights of any person.

13.4 **Modification of the Products:** If we become or reasonably consider that we may become the subject of a claim by any person that the Products and/or your use of the Products in accordance with these Terms does or may infringe that person's Intellectual Property Rights, we may, at our option:

- a obtain such rights as we reasonably consider necessary to ensure that you may continue to use the Products without infringing that person's Intellectual Property Rights; or
- b replace or modify the Products (or any of its functionality) in such a way as to not substantially compromise the primary functionality of the Products.

13.5 **Licence to use your Intellectual Property Rights:** You hereby grant us a non-exclusive, royalty-free licence of your Intellectual Property Rights to the extent necessary or desirable to enable us to:

- a make the Products available to you, carry out any Additional Services, and otherwise perform our obligations under these Terms;
- b make improvements to, update, or otherwise modify the Products; and
- c use your logo and branding for the purposes of publicising that we are working with you.

- 13.6 **Indemnity for incorporation of your materials:** You must indemnify us on demand for all Liability we incur arising out of or in connection with any Third Party IP Claim.

14 Confidentiality

- 14.1 **Obligation of confidentiality:** Subject to clause 14.3, each party ('**Recipient**'):
- a must keep secret; and
 - b subject to clause 14.2, must not disclose to any other person, the Confidential Information of or relating to the other party ('**Discloser**').
- 14.2 **Disclosure:** The Recipient may disclose the Confidential Information to:
- a its legal and professional advisors for the purposes of obtaining advice; and
 - b its subcontractors, if such subcontractors need to know the Confidential Information for the purposes of carrying out the obligations of the Recipient which are subcontracted to them and on the basis the subcontractor is also subject to confidentiality.
- 14.3 **Exclusions:** The obligations under clause 14.1 do not apply to the extent that any Confidential Information:
- a is in, or has become part of, the public domain other than as a result of:
 - i a breach of your obligations of confidentiality arising under clause 14.1; or
 - ii a breach of confidence owing to us by any other person which you knew or ought to have known was a breach of confidence;
 - b is in your possession other than by virtue of disclosure from us or your access to the Products; or
 - c must be disclosed by you under a specific requirement of Applicable Law, subject to clause 14.4.
- 14.4 **Permitted disclosures:** If you are required to make a disclosure under clause 14.3c such disclosure may only be made:
- a to the extent necessary;
 - b to the proper recipient; and
 - c unless prevented by Applicable Law, if you have used reasonable endeavours to give prior written notice to us of the requirement, setting out the nature of the information to be disclosed and provided that where you are prevented by Applicable Law from giving prior notice to us, you must provide notice of the nature of the information disclosed as soon as permissible under Applicable Law after making such disclosure.
- 14.5 **Restrictions on representations and public comment:** Except as expressly contemplated by this agreement, you must not make any representations or public comment regarding the Products without Snapper's prior approval (which approval may not be unreasonably withheld).

15 Disputes

- 15.1 **First-level resolution:** If a Dispute arises, either you or we may by notice to the other party refer the Dispute to the other, with a view to resolving the Dispute by way of good faith negotiations.
- 15.2 **Second-level escalation:** If the Dispute is not settled within 10 Business Days after the date of the notice given under clause 15.1, either you or we may by notice to the other party refer the Dispute to the other, with a view to resolving the Dispute by way of good faith negotiations.
- 15.3 **Mediation:** If the Dispute is not settled by good faith negotiation between the parties within 20 Business Days after the date of the notice given under clause 15.2, either you or we may by notice to the other party refer the Dispute to the mediation of a single mediator appointed by agreement of the parties or, in the absence of agreement within five Business Days after the date of that notice, appointed by the Resolution Institute of New Zealand.
- 15.4 **Conduct of mediation:** The parties must mediate any Dispute on the terms of the Resolution Institute standard Mediation Agreement (NZ version).
- 15.5 **Arbitration:** If the Dispute is not settled by mediation within 40 Business Days after the date of the notice given under clause 15.3, either party may by notice to the other party refer the Dispute to the arbitration of a single arbitrator appointed by agreement of the parties or, failing agreement within Business Days after the date of that notice, appointed by the Resolution Institute of New Zealand.
- 15.6 **Conduct of arbitration:** Unless the parties otherwise agree:
- a the seat of arbitration will be Wellington, New Zealand;
 - b the law applicable to the arbitral proceedings and the matters that are the subject of the Dispute will be the laws of New Zealand; and
 - c the arbitration will otherwise be conducted in accordance with the Arbitration Act 1996.
- 15.7 **Urgent or equitable relief:** Nothing in this clause 15 will prevent a party from commencing court proceedings in a court of competent jurisdiction for the purposes of:
- a enforcing an arbitration award; or
 - b seeking urgent injunctive relief or any other equitable remedy.

16 Notices

- 16.1 **How to give:** Any notice given under or in connection with these Terms:
- a must be in writing; and
 - b will only be validly given if personally delivered, posted, or sent by email to that party's address for service as set out below (or such other address as that party subsequently notifies to the other party):



Snapper:

By post, to: Chief Financial Officer
Level 9, 1 Willis Street
Wellington 6011
New Zealand

By email, to: info@mosaiq.co

You:

The contact details set out in your Order Form.

16.2 **Time of service:** Any notice given under these Terms will be deemed to have been received:

- a in the case of personal delivery, at the time of delivery;
- b in the case of posting, on the fifth Business Day following the date of posting;
- c in the case of email, at the time of dispatch (within the meaning of that term contemplated by section 213 of the Contract and Commercial Law Act 2017), unless the sender was put on notice that the transmission of the email was unsuccessful,

but if any notice is personally delivered or sent by email either after 5pm on a Business Day, or on any day that is not a Business Day, it will be deemed to have been received at 9am on the next Business Day.

17 General

17.1 **Entire agreement:** These Terms (including all documents incorporated by reference):

- a contain the entire agreement between you and us;
- b set out the only conduct relied on by you; and
- c supersede all earlier conduct and prior agreements, representations and understandings between you and us,

in connection with your access to the Products.

17.2 **Rights of third parties:** Nothing in these Terms is intended to confer a benefit upon any person other than you or us, whether under Part 2 of the Contract and Commercial Law Act 2017 or otherwise.

17.3 **No partnership or agency, etc.:** Nothing in these Terms or arising out of the relationship established under these Terms will:

- a constitute you as our agent or grant you any authority to make any commitments on our behalf; or
- b create any trust, joint venture or commercial partnership between you and us.

17.4 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy by us will constitute a waiver by us of that or any other right or remedy available to us.



- 17.5 **No assignment:** You may not assign, charge, encumber, or otherwise deal with any rights and obligations under these Terms or in respect of the Products, or purport to do so.
- 17.6 **Partial invalidity:** If any provision of these Terms or their application to you or to any circumstance is or becomes invalid or unenforceable to any extent, the remainder of these Terms and their application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 17.7 **Rights cumulative:** Our rights under these Terms are cumulative and are not exclusive of any other rights and remedies available to us.
- 17.8 **Governing law:** These Terms will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law.
- 17.9 **Jurisdiction:** You submit to the non-exclusive jurisdiction of the Courts of New Zealand.