

MX ONLINE TERMS AND CONDITIONS

These MX Online Terms and Conditions (the “**Terms**”) are entered into by and between **MX TECHNOLOGIES, INC.**, a Delaware corporation, having its principal place of business at 3401 N Thanksgiving Way, Suite 500, Lehi, Utah 84043 (“**MX**”), and the party identified as the Client in the Order Form (“**Client**”). MX and Client are each individually a “**Party**” and collectively the “**Parties**”.

By signing the Order Form (as defined below), you agree to be bound by these Terms. The Agreement (as defined below) will become effective as of the last date signed on the Order Form (the “**Effective Date**”).

1. DEFINITIONS

- 1.1 “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party. “Control”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2 “**Agreement**” means the Order Form, any applicable Spec Sheets, and these Terms (including any exhibits, addenda, and amendments where properly attached or incorporated by reference).
- 1.3 “**Anonymous & Aggregated Data**” means Consumer Data and information that is anonymized and aggregated with similar data and information to the extent that the original Consumer Data and information is no longer attributable to Client or to any specific Consumer.
- 1.4 “**Confidential Information**” means all non-public or proprietary information of a Party disclosed by the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including (i) the terms and conditions of this Agreement (including pricing and other terms reflected in the Order Form); (ii) Consumer Data; (iii) a Party’s intellectual property rights; (iv) the MX Materials; (v) each Party’s respective security information and reports; (vi) any confidential information of Third-Party Data Providers that Client may receive in connection with the Services; and (vii) each Party’s respective business and marketing plans, technology and technical information, product designs, and business processes.
- 1.5 “**Consumer**” means an individual who is authorized by Client to use or access the Services and who has (i) been supplied an identification and password by Client or at Client’s direction or (ii) for whom a unique user record is created by or authorized to be created by Client within the Services.
- 1.6 “**Consumer Data**” means Consumer’s login, password, any other authentication information required by Client or a Consumer’s third-party financial institution, and any Consumer transaction data.
- 1.7 “**Documentation**” means the MX Materials, MX User Guide and applicable Spec Sheet(s).
- 1.8 “**MX Materials**” means any materials that MX provides to Client as part of, or in the course of providing, the Services or Professional Services including implementation materials provided through MX’s developer portal.
- 1.9 “**MX Technology**” means technology owned by MX or licensed to MX by a third-party (including the Services, Professional Services, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world) and feedback made to MX that are incorporated into any of the foregoing (which are hereby irrevocably assigned to MX), as well as any of the modifications or extensions of the above, whenever or wherever developed.
- 1.10 “**MX User Guide**” means the applicable user guides, frequently asked questions, help, and other documentation provided by MX to Client. For some MX products, additional guidance is accessible from within the Services under the “help” menu.
- 1.11 “**Nonpublic Personal Information**” means personally identifiable financial information as defined under Regulation P, 12 C.F.R. 1016, or the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or information otherwise considered privileged, confidential, private, nonpublic or personal given protected status under applicable law.
- 1.12 “**Order Form**” means the ordering document executed by the Parties that specifies the Services and Professional Services being procured by Client under this Agreement.
- 1.13 “**Professional Services**” means certain implementation, consulting, technical, education or training services provided by MX to Client, as described more fully in the Order Form and any applicable Spec Sheets.

- 1.14 **“Services”** means the products and services ordered by Client identified on the Order Form and made available by MX through its online, web-based application or mobile components via designated websites, IP addresses, application programming interface(s), or other means.
- 1.15 **“Spec Sheet”** means a document provided by MX that describes the work by MX and Client that is necessary to configure the Services purchased by Client in the Order Form.
- 1.16 **“Term”** means the duration of the license for the Services as stated in the Order Form.
- 1.17 **“Third-Party Data Provider”** means any third-party entity, including financial institutions, which provides Consumer Data or other data to MX for use in the Services.

2. FEES AND PAYMENT

- 2.1 **Invoicing and Payment.** Client must pay all fees specified in the Order Form. Except as otherwise specified in the Order Form, all fees and charges under this Agreement will be invoiced in advance and are due net 30 days from the invoice date. Client agrees to accept invoices via email at the billing contact email address specified in the Order Form, as may be updated by Client upon written notice. Invoices will be emailed on the day of the date of invoice. In the event that the email date is later, such later date will apply. Clients located outside the U.S. must submit payment to MX via wire transfer. Client is responsible for providing complete and accurate billing address and contact information to MX.
- 2.2 **Fee Disputes.** If Client believes an invoice is incorrect, Client must contact MX in writing within 60 days of such invoice date to be eligible to receive an adjustment. The Parties agree to engage in good faith efforts to promptly resolve any payment related disputes.
- 2.3 **Overdue Payments.** Any payment not received by MX by the due date and not subject to a reasonable and good faith dispute may accrue, at MX’s option, late charges at the lesser of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, from the date such payment was due until the date paid. Client will be responsible for any fees charged to MX due to insufficient funds in Client’s payment account. If Client’s account is 30 days or more overdue (except for charges then under reasonable and good faith dispute), MX reserves the right to suspend Client’s access to the Services until such amounts are paid in full.
- 2.4 **Taxes.** Prices do not include applicable taxes. Client is responsible for paying all taxes associated with its purchases hereunder. If MX has the legal obligation to pay or collect taxes for which Client is responsible under this Agreement, the appropriate amount of such taxes will be invoiced to and paid by Client, unless Client provides MX with a valid tax exemption certificate.

3. LICENSE AND RESTRICTIONS

- 3.1 **License Grant.** Subject to the terms of this Agreement, MX grants Client a non-exclusive and non-transferable right, solely during the Term:
 - (A) to permit authorized Consumers to access and use the Services;
 - (B) to use the Services in accordance with the Documentation and solely for Client’s internal business purposes; and
 - (C) to use the MX Materials solely in conjunction with Client’s authorized use of the Services.
- 3.2 **Restrictions.** All rights not expressly granted to Client hereunder are reserved by MX. Client agrees that it must not, and must not permit or authorize any third party to:
 - (A) use the Services in (i) violation of any applicable law, regulation or regulatory guideline, or (ii) a manner that would cause a material risk to the security or operations of MX or any of its clients, or to the continued normal operation of other MX clients;
 - (B) copy, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted in Section 12.7), distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than to Consumers or as otherwise contemplated by this Agreement;
 - (C) attempt to gain unauthorized access to the Services or their related systems or networks, or modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing inputs or output flowing through a system or an application), decompile, or otherwise attempt to discover within any MX Technology, the source code, data representations, or underlying algorithms, processes and methods. (This restriction will not apply to the extent it limits any non-waivable right Client may enjoy under applicable law);

- (D) access the Services in order to build a competitive product or service, or copy any ideas, features, functions or graphics of the Services;
- (E) frame, scrape, link to, or mirror any content forming part of the Services, other than on Client's own intranets or otherwise for its own internal business purposes;
- (F) remove, obscure, or alter any proprietary notices associated with the Services or MX Materials;
- (G) use Consumer Data obtained through the Services in any way as, or as part of, a consumer report as that term is defined by the Fair Credit Reporting Act 15 U.S.C. §1681;
- (H) process through Services any data that falls under the protections of the Health Insurance Portability and Accountability Act of 1996;
- (I) circumvent, disable, or stress test any security or other technological features of the Services; or
- (J) re-identify or attempt to re-identify Consumer Data provided in a de-identified form.

3.3 Responsibility. MX will provide:

- (A) the Services consistent with the obligations detailed in the Service Level Agreement found at <https://www.mx.com/service-level-agreement/> and incorporated herein by reference; and
- (B) Client with primary general and technical support via email for the Services from 9:00 AM to 5:00 PM Mountain Time, Monday through Friday (except for U.S. Federal Holidays).

3.4 Beta Services. MX may offer Client access to pre-release functionality that is not yet generally available to be licensed by MX clients ("Beta Services"), which Client may elect to use or not use in its sole discretion. Client acknowledges that Beta Services are intended for evaluation purposes only and may not be used: (A) in a Production Environment; (B) with any Nonpublic Personal Information; or (C) with any Consumer Data. Notwithstanding anything to the contrary in these Terms, Beta Services are not supported by MX, or subject to any service level obligations or warranties. Either Party may immediately terminate Beta Services, with or without cause. Client acknowledges and agrees that MX may never make the Beta Services generally available.

4. THIRD PARTIES

4.1 Third-Party Providers. Client is responsible for complying with any applicable terms and conditions of any third-party products, services, and platforms used by Client in conjunction with the Services, which are not provided by MX as part of the Services.

4.2 Third-Party Access.

- (A) **Use by Affiliates.** Client may allow its Affiliates to use and access the Services, Documentation, and Consumer Data.
- (B) **Outsourcing and Third-Party Access.** Client may allow a third-party contractor to operate, use or access the Services or Consumer Data solely on Client's behalf, provided such use or access is only for Client's direct beneficial business purposes.
- (C) **Responsibility for Third Parties.** Client acknowledges and agrees that it is solely responsible for ensuring that any Affiliate or other third party operating, using or accessing the Services or Consumer Data on Client's behalf complies with Client's obligations under this Agreement. Client is responsible and liable for the acts or omissions of such third party as if they were Client's own acts or omissions.

4.3 Third-Party Data Providers.

- (A) Client acknowledges that, at its instruction, Consumer Data may be sourced from Third-Party Data Providers.
- (B) The Parties acknowledge that Consumer Data may include Nonpublic Personal Information and the Parties agree to protect that Consumer Data as detailed in the Data Protection Terms found at <https://www.mx.com/data-protection-terms/> and incorporated herein by reference.
- (C) Client acknowledges that Consumer Data it sources from Third-Party Data Providers carries with it the obligations detailed in the Third-Party Data Provider Terms (found at <https://www.mx.com/third-party-data-provider-terms/> and incorporated herein by reference) and Client agrees to comply therewith.

5. PERMITTED USE

- 5.1 **Ownership.** As between MX and Client, Client owns (or where applicable, must ensure it has a valid license to use) the Consumer Data.
- 5.2 **Permitted Use.** Client grants MX a non-exclusive, worldwide, royalty-free:
- (A) license to reproduce, display, adapt, enhance, aggregate, transmit, distribute and otherwise use Consumer Data as necessary or reasonable to provide the Services and to generate Anonymous & Aggregated Data;
 - (B) limited license, during the Term of this Agreement, to use the trademarks, marks, logos and trade names (“Marks”) of Client, and to sublicense the same to Third-Party Data Providers, for the sole purpose of providing the Service (e.g., identifying Client to Consumers as a source or recipient of Consumer Data, or rebranding of the Services in those scenarios where Client has licensed such white-labeled rights). MX will use the Marks and will require that any Third-Party Data Provider use the Marks in compliance with any reasonable trademark use policies Client may promulgate from time to time and provide to MX in writing; and
 - (C) transferrable, sublicensable, perpetual and irrevocable license to reproduce, display, adapt, enhance, transmit, distribute and otherwise use Anonymous & Aggregated Data.
- 5.3 **Responsibility.**
- (A) **Consumer Consent.**
 - (i) Client must only request Consumer Data through the Services that is expressly consented to by Consumer.
 - (ii) If Client both accesses Consumer Data and initiates payments, it must obtain separate and distinct consents from Consumer for these separate activities.
 - (iii) Client must have and maintain such systems and procedures as may be reasonably necessary or otherwise required by MX (consistent with applicable law and industry best practices) to actively track, monitor and document such Consumer consent and any revocation thereof.
 - (B) **Consumer Control.** Client must provide Consumer the ability to unlink such Consumer Data from any Client application or service. In the event that any Consumer unlinks (or requests the unlinking of) its Consumer Data from any Client application or service, Client will promptly notify MX of the same. Upon request by Consumer, Client must promptly and permanently delete all Consumer Data in Client’s possession or control, and promptly notify MX of the same.
 - (C) **Consumer Data Access.** MX will provide Client a list of Internet Protocol addresses (“IP Addresses”) from which MX may access Consumer Data from Client on behalf of Consumers. MX may update the provided list from time to time. Client must not block or otherwise obstruct MX from accessing Consumer Data from Client using the IP Addresses in the provided list.

6. CONFIDENTIALITY

- 6.1 **Confidentiality.** The receiving Party must not disclose or use any Confidential Information of the disclosing Party for any purpose outside the scope of this Agreement, except with the disclosing Party’s prior written permission. Either Party may disclose Confidential Information to its personnel, subcontractors, and auditors who are subject to confidentiality obligations comparable in scope to those herein.
- 6.2 **Exclusion.** Confidential Information does not include any information that (A) is or becomes generally known to the public without breach of any obligation by the receiving Party; (B) was known to the receiving Party, free of any confidentiality obligations, prior to its disclosure by the disclosing Party; (C) is lawfully received from a third party without breach of any obligation owed to the disclosing Party and without an obligation of confidentiality; or (D) was independently developed by the receiving Party without the use of or reference to Confidential Information.
- 6.3 **Protection.** The receiving Party will use at least the same level of care to prevent unauthorized use of the Confidential Information as it uses for its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care.
- 6.4 **Compelled Disclosure.** If the receiving Party is compelled by law to disclose Confidential Information of the disclosing party, it must provide the disclosing Party with prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at disclosing Party’s cost, if the disclosing Party wishes to contest the disclosure.

7. INDEMNIFICATION

7.1 **By Client.** Client will defend MX, at Client's expense, against any claims, demands, suits or proceedings ("**Claims**") made or brought against MX by a third party to the extent that it arises from:

- (A) Client's failure to obtain valid consent to use the Consumer Data as contemplated hereunder or Client's use of Consumer Data in excess of Consumer's obtained consent;
- (B) Client's failure to meet its obligations as set out in Section 4 of these Terms; or
- (C) an allegation that any products or services offered or provided by Client that are sold or integrated by Client with the Services infringes a patent, copyright, or trademark of a third party or misappropriates such third party's trade secrets.

Client will indemnify MX against all costs, including reasonable attorneys' fees, finally awarded against MX by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Client, in connection with such Claims.

7.2 **By MX.** MX will defend Client, at MX's expense, against any Claims made or brought against Client by a third party to the extent that it arises from:

- (A) MX's failure to meet its obligations as set out in Section 4 of these Terms; or
- (B) an allegation that the use of the Services as contemplated hereunder, directly infringes a U.S. patent, copyright or trademark of a third party or misappropriates such third party's trade secrets ("**Infringement Claim**").

MX will indemnify Client against all costs, including reasonable attorneys' fees, finally awarded against Client by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by MX, in connection with such Claims.

7.3 Infringement Claims.

- (A) **MX's Response.** If, in conjunction with an Infringement Claim, the Services are held or likely to be held infringing, MX will have the option, at its expense, to (i) replace or modify the Services as appropriate; (ii) obtain a license for Client to continue using the Services; (iii) replace the Services with a functionally equivalent service; or (iv) terminate the applicable Services and refund any prepaid, unused fees applicable to the remaining portion of the Term of the applicable Services following the effective date of termination.
- (B) **Exceptions.** MX will have no indemnification obligation for Infringement Claims arising from the (i) combination of the Services with any services, hardware, data or business processes not provided by MX, or (ii) use of the Services by Client or Consumer other than in accordance with this Agreement or the applicable Documentation.

7.4 **Conditions.** The indemnitor's obligations in Sections 7.1 and 7.2 are conditioned on the indemnitee:

- (A) promptly giving written notice of the Claim to the indemnitor;
- (B) giving the indemnitor sole control of the defense and settlement of the Claim;
- (C) providing the indemnitor with reasonable assistance requested by the indemnitor for the defense or settlement (as applicable) of the Claim; and
- (D) refraining from making admissions or statements about the Claim without the indemnitor's prior written consent.

7.5 **Sole and Exclusive Remedy.** The remedies in this Section 7 are, in addition to any termination or suspension remedies expressly set forth in this Agreement, the indemnitee's sole and exclusive remedies and the indemnitor's sole liability regarding the subject matter giving rise to any Claim.

8. LIMITATIONS OF LIABILITY

8.1 **Subject to Section 8.3, neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits; loss of reputation, use, or revenue; or interruption of business. This Section 8.1 does not apply to those amounts expressly recoverable by the indemnified Party under Section 7 regardless of how such amounts are classified for damages purposes.**

- 8.2 **Subject to Section 8.3, the maximum aggregate liability of each Party for all Claims under this Agreement is limited to an amount equal to the aggregate of the fees payable by Client under the applicable Order Form during the 12 months before the event that is the subject of the initial Claim.**
- 8.3 **Sections 8.1 and 8.2:**
- (A) **apply regardless of the form or source of Claim or loss, including negligence, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss; and**
- (B) **do not apply to Client's payment obligations or to either Party's liability for: death or bodily injury, gross negligence or willful misconduct, breach of Section 6 (Confidentiality), misappropriation of the other Party's intellectual property, or either Party's indemnification obligations in Section 7. Notwithstanding the foregoing, the aggregate liability for either Party's indemnification obligations for breaches of Section 4 will be limited to an amount equal to 2 times the aggregate of the fees payable by Client under the Order Form during the 12 months before the event that is the subject of the initial Claim.**

9. WARRANTIES AND DISCLAIMERS

- 9.1 **Mutual Warranties.** Each Party represents and warrants that it has the legal power and authority to enter into and perform its obligations under this Agreement and will comply in all material respects with applicable law related to the performance by it of its obligations under this Agreement.
- 9.2 **MX Limited Warranty and Remedy for Services.** MX warrants that the Services will perform materially in accordance with the applicable MX User Guide under normal use and circumstance. Client must notify MX of a claim under this warranty within 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Client's sole and exclusive remedy and MX's sole liability under or in connection with this warranty will be to correct any material reproducible impairments to the features and functionality in the Services so that it materially conforms to this warranty, and if MX is unable to provide such Services as warranted within a commercially reasonable time following receipt of written notice of breach, Client will be entitled to terminate the Order Form and receive a refund of any prepaid, unused fees applicable to the remaining portion of the Term following the effective date of termination.
- 9.3 **Disclaimer.** Except as expressly provided in these Terms, Client understands and agrees that the Services and Consumer Data are provided "as is" and MX, its Affiliates, suppliers, Third-Party Data Providers, resellers, and its licensors make no warranties of any kind whether express, implied, statutory or otherwise, and specifically disclaim all implied warranties, including any warranties of merchantability, quiet enjoyment, satisfactory quality, non-infringement of third-party rights, and fitness for a particular purpose to the maximum extent permitted by applicable law. MX, on behalf of itself and all Third-Party Data Providers, expressly disclaims any type of representation or warranty regarding the availability of Consumer Data or that access to Consumer Data will be uninterrupted or error-free and, except as expressly provided for herein, expressly disclaims the accuracy, completeness and currency of all Consumer Data.
- 9.4 **Client Warranties.** Client warrants that it will not make representations, warranties or guarantees to Consumers, or any other third party with respect to the specifications, features or capabilities of MX or the Services that are inconsistent with the terms of this Agreement.

10. PROFESSIONAL SERVICES

- 10.1 Client agrees that its purchase of the Services, Professional Services or Support Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by MX or any of its employees or agents with respect to future functionality or features.
- 10.2 If Client procures Professional Services from MX, the specific details of the Professional Services will be described on the Order Form on a per-project basis. MX does not provide any custom deliverables or services under the Agreement that would qualify as work-made-for-hire. Professional Services will be performed remotely unless otherwise specified, in which case, Client will be invoiced at cost for pre-approved reasonable travel, hotel, and out-of-pocket expenses properly incurred by MX in connection with the Professional Services.
- 10.3 MX warrants that the Professional Services will be performed in a professional and workmanlike manner. Client must notify MX in writing within 30 days of performance of such Professional Services of any defects. To the extent permitted by law, Client's sole and exclusive remedy for breach of this warranty and MX's sole liability under or in connection with this warranty will be re-performance of the relevant Professional Services.

11. TERM AND TERMINATION

- 11.1 **Term.** This Agreement applies to the Services and Professional Services beginning on the start date specified in the Order Form and continues for the Term specified therein. Unless otherwise stated in the Order Form, this Agreement, including the Order Form, will automatically renew for successive 1-year periods, unless either Party provides the other with written notice of non-renewal at least 30 days prior to the expiration of the then current Term.
- 11.2 **Termination for Cause.** A Party may terminate an Order Form for cause if the other Party is in material breach under this Agreement and fails to cure such breach within 30 days of receipt of written notice of such material breach from the non-breaching Party.
- 11.3 **Effect of Termination or Expiration.**
- (A) All access to and use of the Services and all Professional Services will immediately cease upon termination or expiration of the Order Form.
 - (B) If the Agreement is terminated for any reason other than MX's uncured material breach, Client will be responsible for fees covering the remainder of the then-current Term.
 - (C) If the Agreement is terminated for MX's uncured material breach, MX will provide Client a pro-rata refund of all prepaid but unused fees.
 - (D) Each Party will return to the other Party or destroy all materials containing or reflecting any of the other Party's Confidential Information.
- 11.4 **Suspension.** MX will have the right to suspend Client's access, in whole or in part, to the Services and any Consumer Data MX's reasonable good-faith belief that:
- (A) Client is acting in an unauthorized manner with respect to its access to the Services or any Consumer Data;
 - (B) there is a material risk to the security or integrity of the Services, the Consumer Data, or any systems of MX or Client; or
 - (C) suspending access is reasonably necessary to prevent harm to the business or reputation of MX, any Third-Party Data Provider, and/or their respective customers.

Any suspension will be reasonably limited in scope. Unless prohibited by applicable law, MX will provide Client with prompt (and, where reasonably practicable, advance) notice of the suspension, including a description of the scope and reasons for the suspension. The Parties will cooperate in good faith to remediate the reason for any suspension. Upon resolution of the issue causing the suspension, MX will promptly permit Client to resume using the Services.

12. GENERAL PROVISIONS

- 12.1 **Governing Law.** This Agreement and any disputes arising out of or related hereto will be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its conflicts of law rules, the United Nations Convention of the International Sale of Goods, or the Uniform Computer Information Transactions Act.
- 12.2 **Venue; Waiver of Jury Trial.** The state and Federal courts located in Salt Lake County, Utah or Utah County, Utah will have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts and waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. Each Party also hereby waives any right to a jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 12.3 **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- 12.4 **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity. No claim or action arising out of this Agreement may be asserted by either Party more than 1 year after the date on which such Party has actual knowledge of the material facts upon which the claim or action is based; such limitation will not extend any applicable statute of limitations.

- 12.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.
- 12.6 **Advertising and Publicity.** Either Party may reference the name and logo of the other Party in lists of customers or vendors. Either Party may issue press releases, promotional materials, and advertising materials related to this Agreement with the other Party's prior written consent. Client may not issue any media release or make any public announcement or public disclosure relating to or referencing any Third-Party Data Provider or the provision of Consumer Data by or through such Third-Party Data Provider in connection with this Agreement, without the prior written consent of such Third-Party Data Provider. The Parties agree to issue a joint press release announcing their relationship as soon as reasonably practicable after the Effective Date.
- 12.7 **Assignment.** Neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety (including all rights and obligations) without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any purported assignment in violation of this section will be null and void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 12.8 **Export Control.** Client acknowledges that the Services may be subject to export control laws and regulations, and Client will comply with them.
- 12.9 **Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, provisions on intellectual property (including ownership), license, privacy, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.
- 12.10 **Notices.** Any notice given under this Agreement (a) regarding legal or other contract issues, to the attention of MX Legal at mxlegal@mx.com; (b) regarding accounting or billing issues, the attention of MX Accounts Payable at accounts.payable@mx.com; and if the Client, to the attention of the signatory of this Agreement, or to such other address or individual as the Parties may specify from time to time by written notice to the other Party. MX may provide notices and communications directed to its customer base generally by means of a general notice through the Services, or by electronic mail to Client's administrator e-mail address on record in MX's account information.
- 12.11 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.
- 12.12 **Third-Party Beneficiaries.** Third-Party Data Providers are intended third-party beneficiaries of those provisions specifically protective of those parties. Otherwise, no person or entity not a party to this Agreement will be deemed to be a third-party beneficiary of this Agreement or any provision hereof.
- 12.13 **Client's Purchase Order.** If Client requires a purchase order prior to payment, Client agrees to provide such purchase order no later than 3 days after execution of the Order Form. No terms or conditions set forth on any purchase order, preprinted form or document will add to or vary the terms and conditions of this Agreement, and all such terms or conditions will be null and void.
- 12.14 **Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: Sections 1 (Definitions), 2 (Fees and Payment), 3.2 (Restrictions), 4 (Third Parties) 6 (Confidentiality), 7 (Indemnification), 8 (Limitation of Liability), 9.2 (Remedies), 9.3 (Disclaimer), 12 (General), in addition to any provisions that by their nature should, or by their own express terms do, survive or extend beyond termination or expiration of this Agreement.
- 12.15 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, the Order Form, and all Spec Sheets, constitutes the entire agreement between the Parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The Parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties set forth in this Agreement. No

modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted; provided, however, that MX may update these Terms in its sole discretion from time to time. MX will make available to Client any updated Terms. To the extent of any conflict or inconsistency between the provisions of the body of these Terms and any exhibit or addendum hereto or the Order Form or any Spec Sheet, the terms of such exhibit, addendum, Order Form, or Spec Sheet will prevail. No other rights are granted hereunder except as expressly set forth in the Agreement.