

Terms & Conditions

MX® E-SIGN Agreement and Disclosure and Terms and Conditions Updated March 15, 2016

## **E-SIGN DISCLOSURE AND AGREEMENT FOR MX DIGITAL MONEY MANAGEMENT SERVICES**

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### **APPLICABILITY OF CONSENT**

The E-Sign Disclosure and Agreement applies only to digital money management services provided through MX Technologies, Inc. ("MX").

### **ELECTRONIC DELIVERY OF DISCLOSURES AND NOTICES**

By agreeing to the terms of this E-SIGN Disclosure and Agreement, you are consenting to receive electronic communication, including, but not limited to, disclosures, notices and Terms and Conditions related to the opening and use of and access to your accounts via the MX Digital Money Management Services.

### **HARDWARE AND SOFTWARE REQUIREMENTS**

MX Digital Money Management Services supports the following browsers and operating systems:

- Chrome, Safari, Firefox latest version
- Microsoft Edge and Internet Explorer 11
- iOS 7.0 or higher®
- Android 4.0.3 or higher®
- Windows 8.1 or higher

Your mobile device must have an Internet browser, a data plan and/or the device must be able to access the Internet. Additionally, Adobe® Reader® software is required to read the account statements and other important notices. MX supports the two most recent versions of Adobe Reader.

We may revise hardware and software requirements from time-to-time and will notify you if there is a material risk that based on the changes you would not be able to access your electronic records.

You are responsible for the installation, maintenance, and operation of your computer or electronic device. We are not responsible for any errors or failures from any malfunction of your computer or electronic device, for any virus, other problems or changes that may be associated with the use of your computer or electronic device, including, for example, the cost of your Internet Service Provider.

## **WITHDRAWAL OF ELECTRONIC ACCEPTANCE OF DISCLOSURES AND NOTICES**

You may withdraw your consent to receiving electronic disclosures or notices at any time by contacting MX Customer Service at [tech.support@mx.com](mailto:tech.support@mx.com). Your withdrawal of consent will be effective after we have had a reasonable opportunity to act upon it.

Termination and/or withdrawal of electronic acceptance will result in your being unable to use Digital Money Management Services.

## **GOVERNING LAW**

The E-Sign Disclosure and Agreement is made in Utah and is subject to Utah law to the extent it is not inconsistent with federal law or regulation.

## **CONSENT**

By providing your consent, you are also confirming that you have the hardware and software described above, that you are able to receive and review electronic records, and that you have an active email address for use if you choose to set up any alert notification feature that permits you to request automated notification of specific situations. This consent applies only to MX's digital money management application.

## **ACCEPTANCE OR DECLINE**

By selecting that you have read and accepted the conditions within this disclosure and clicking "Continue" on the Money Insight overview screen, you are agreeing to receive disclosures electronically as stated in this E-Sign Disclosure and Agreement and you are agreeing to the following Terms and Conditions listed below.

If you DO NOT want to consent to electronic delivery of disclosures, you can exit Money Insight without proceeding.

## **ADDITIONAL TERMS AND CONDITIONS**

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You are accessing services provided directly or indirectly to you from MX Technologies, Inc. and being asked to agree to a legally binding agreement in accordance with the terms and conditions set forth below. Therefore, we encourage you to read this thoroughly and carefully.

If you are under the age of eighteen (18) years of age, or are not at least the age of majority or otherwise incapable of binding to a legal contract in the jurisdiction from which you enter into this agreement, you MUST have your legal guardian (e.g., your parent) or someone with authorized power of attorney review this agreement and consent upon your behalf or you should not proceed any further. Notwithstanding the foregoing, MX has not designed the Services with the intention that such be used by minors nor does it market the Services for use by minors.

These Terms and Conditions constitute an agreement between you, whether you are a registered user or visitor to the MX.com website (such visitor, user or—solely for agreements entered by a legal guardian or power of attorney—the person for whom this agreement is entered, hereinafter "you", "your" or "user"), and MX Technologies, Inc. including its affiliates and service providers ("MX", "our", "we" or "us"), pertaining to your use of the MX.com website (the "Site") and/or any of its affiliated web applications (the "Services"). By using the Site and/ or Services, you agree to be bound by these Terms and Conditions and our Privacy Notice, available at <https://www.mx.com/privacy-notice>, which is hereby incorporated by reference into these Terms and Conditions (collectively, the "Terms"). These Terms constitute the complete and exclusive understanding and agreement between you and us relating to the subject matter hereof, and replace all previous Terms and Conditions or similar agreements or documentation entered into between you and MX, whether written or oral.

## **ACCEPTING THE TERMS:**

BY CLICKING to accept or agree to the Terms, where this option is made available to you by MX in the user interface for any of the Services, OR BY USING ANY PART OF THE SERVICES, YOU EXPRESSLY (a) ACKNOWLEDGE THAT YOU HAVE READ ALL OF THESE TERMS; (b) AGREE AND CONSENT TO THE TERMS; (c) REPRESENT AND WARRANT THAT YOU: (i) IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF A BUSINESS ENTITY OR ANOTHER INDIVIDUAL, ARE AUTHORIZED TO BIND SUCH ENTITY OR SUCH INDIVIDUAL, AND (ii) AGREE TO BE BOUND BY THE TERMS, INCLUDING THE DISCLAIMERS AND LIMITATIONS OF LIABILITY; AND (d) AGREE TO BE LIABLE FOR ANY NONCOMPLIANCE WITH THESE TERMS. IF YOU DO NOT AGREE TO ANY OF THE TERMS, DO NOT CLICK THE ACCEPTANCE BUTTON, IF APPLICABLE, AND DO NOT ACCESS OR USE THE SERVICES.

MX may from time to time update these Terms and your continued use of the Services indicates your agreement to any modification with respect to these Terms. You may not use the Services and may not accept the Terms if (i) you are incapable of binding you to a contract with MX, or (ii) you are a person barred from receiving the Services under the laws of the United States or other countries including the country in which you are resident or from which you use the Services.

## **SERVICES:**

The Services are a digital money management service that allows registered users to organize, consolidate, manage and track their financial information. From time to time MX may modify the Services and add, change, or delete features of the Services, in its sole discretion, without notice to you.

You agree to provide accurate, current and complete information about yourself while registering for the Services and to maintain and update this information to keep it accurate, current and complete. You agree to not misrepresent your identity or your registration and account information. Failure to provide accurate and complete information during registration or account setup may prohibit your use of the Services or result in errors in information generated.

You are solely responsible for (a) maintaining the confidentiality and security of your login information, passwords, and any other security or access information used by you or anyone you authorize on your behalf to access the Services (collectively, "Account Information"), (b) preventing unauthorized access to or use of the information, files or data that you store or use in or with the Services (collectively, "Account Data"), (c) all electronic communications, including account registration and other account holder information, email and financial, accounting and other data entered using the Account Information ("Communications"), and (d) without limiting the foregoing, any and all activities that occur under your account. MX shall assume that any Communications received through use of the Account Information were sent or authorized by you. You agree to immediately notify MX if you become aware of any loss, theft or unauthorized use of any Account Information. We reserve the right to deny you access to the Services (or any part thereof) if we reasonably believe that any loss, theft or unauthorized use of Account Information has occurred. You must inform MX of, and hereby grant to MX and its affiliates, third-party providers, partners, licensors, employees, distributors and agents permission to use the Account Information to enable MX to provide the Services to you, including updating and maintaining Account Data, addressing errors or service interruptions, and to enhance the types of data and services MX may provide to you in the future.

MX may use, modify, display, distribute and create new materials using the Account Information, Account Data and/or your Communications to provide the Services to you. By submitting Account Information, Account Data and Communications, you agree that MX may use your Account Information, Account Data and Communications for the purposes set out herein, without any particular time limit and without the payment of any fees.

Anonymous, aggregate information that does not contain personally identifiable information, comprising financial account balances, other financial account data, or other available data that is collected through users' use of the Services, may be used or licensed by MX for various purposes including but not limited to

conducting certain analytical research, performance tracking, benchmarking helping to improve products and services and to assist in troubleshooting and technical support.

To the extent that a user requests customer service or other assistance from MX, you agree that MX is authorized to access and view your account information to provide such assistance and support.

#### **PROVIDER SERVICES:**

In connection with your use of the Services and as part of the functionality of the Services as may be applicable, you may have access to certain online services or information that may be made available by your bank and/or other third party provider(s) ("Provider Services"), including online banking, online payment, online investment account download, online bill pay, online trading, and other account information available from third party provider(s). The Services may be designed to allow access to Provider Services (if and to the extent provided by users' provider(s)) to set up banking and other information, schedule the Services to access user account(s), download transactions into the Services and otherwise aggregate information from user account(s) with third party provider(s). MX has no control over the provision of Provider Services or provision of access to the Provider Services by users' provider(s). MX does not guarantee the Provider Services. You agree that you may be able to use the Services in conjunction with the Provider Services, and that MX disclaims any and all liability whatsoever for any actions or inactions on the part of your provider(s) resulting in any inability to use the Services to access accounts, obtain data, download transactions, or otherwise use or access the Provider Services.

You acknowledge and agree when you access data and information through the Services, third party provider account access number(s), password(s), security question(s) and answer(s), account number(s), login information, and any other security or access information, and the actual data in your user account(s) with such provider(s) such as bank and other account balances, credit card charges, debits and deposits as may be applicable (collectively, "Provider Account Data"), may be collected and stored in the Services. You expressly authorize MX and our third party providers, in conjunction with the operation and hosting of the Services, to use certain Provider Account Data to (i) collect Provider Account Data, (ii) reformat and manipulate such Provider Account Data, (iii) create and provide hypertext links to provider(s), (iv) access the providers' websites using Provider Account Data, (v) update and maintain account information, (vi) address errors or service interruptions, (vii) enhance the type of data and services we can provide in the future, and (viii) take such other actions as are reasonably necessary to perform the actions described in (i) through (vii) above. In accessing and using the Services you represent that you are the legal owner of the Provider Account Data and that you have the authority to appoint, and do expressly appoint, MX or our third party providers as your agent with limited power of attorney to access and retrieve Provider Account Data on your behalf. You further acknowledge that MX does not (nor do our third party providers), review Provider Account Data and you agree that we are not responsible for its completeness or accuracy. Any transactions or informational activities performed at any provider's website are not made through the Services and MX assumes no responsibility for such transactions or activities. You acknowledge that you are solely responsible for any charges associated with provider(s). **YOU ACKNOWLEDGE AND AGREE THAT WHEN MX OR ITS THIRD PARTY PROVIDERS ACCESS AND RETRIEVE INFORMATION FROM USERS' PROVIDERS, MX AND ITS THIRD PARTY PROVIDERS ARE ACTING AS USERS' AGENT, AND NOT THE AGENT OR ON BEHALF OF PROVIDERS.**

You further acknowledge and agree that (i) some providers may not allow the Services to access the Provider Services, (ii) providers may make changes to their websites, with or without notice to MX, that may prevent or delay aggregation of information from such websites, and (iii) the Services may "refresh" the Provider Account Data by collecting the Provider Account Data nightly, so your most recent transactions may not be reflected in any account balances or other account information presented to user in the Services. In the event that you see a discrepancy in the Provider Account Data, and in any case before making any transactions or decisions based on such account information presented in the Services, you agree to check the last refresh date for the account and confirm with that applicable provider that the Provider Account Data is correct or otherwise confirm that Provider Account Data is up to date and accurate.

## **LIMITATIONS:**

Your right to use the Services is personal to you and is not transferable by you to any other person or entity. You may not, without our express prior written consent: (a) copy, reproduce, distribute or create derivative works of any portion of the Services; (b) reverse engineer, decompile, alter, modify, disassemble or otherwise attempt to derive source code utilized in the Services or any third-party applications incorporated into the Services, including Java applets associated with the Services; (c) sell, rent, sublicense, lease, lend or allow time-share access or use to third parties of any portion of the Services; (d) distribute or provide copies of any portion of the Services to third parties; (e) resell the use of the Services; (f) use the Services to provide services to any third parties, including business process outsourcing, service bureau applications or training of third parties; or (g) use the Services as a platform for designing and creating a competing product or service, including one for only your internal use. In the event that we have reason to believe you, or any third parties on your behalf, have developed, or are in the process of developing, a software system similar to the Services or are otherwise in violation of these Terms, you agree to promptly provide us information to assist us with any applicable investigation, including allowing us to audit your use of the Services. In the event we determine you have developed a software system similar to the Services, you hereby grant us authority to secure injunctive relief from your continued development and/or sale of such competing product or services. All rights not expressly granted to you in this Agreement are reserved to MX.

You are solely responsible for your Account Data, including the accuracy, quality and reliability of all such content. You represent and warrant that: (i) none of your Account Data violates any third party's copyright, patent, trademark, trade secret or other proprietary or intellectual property rights or rights of publicity or privacy (collectively, "Intellectual Property Rights"), and (ii) you have obtained all consents and waivers required under all applicable local, state, national and international laws, rules, statutes, treaties and regulations (including those governing account collection, export control, consumer protection, data privacy, unfair competition, anti-discrimination and false advertising) (collectively, "Laws") for the provision, manipulation, retention, use and sharing of personal data of individuals (including you) with respect to whom information is supplied by you as part of your use of the Services, and that you will retain all such consents and waivers and/or provide them to MX at any time upon request. Notwithstanding the foregoing, we reserve the right to take any action with respect to the Services that we deem necessary or appropriate in our sole discretion if we believe you or your use of the Services may create liability for MX. Your use of the Services is subject to all applicable Laws. In connection with your use of the Services, you agree to: (A) comply with all applicable Laws; (B) maintain the security of access to the Services; (C) not use the Services for illegal purposes; (D) not interfere or disrupt networks connected to the Services; (E) not attempt to gain unauthorized access to other computer systems; (F) not interfere with another user's use and enjoyment of the Services, including disrupting the normal flow of dialogue; (G) not use the Services to infringe any third party's Intellectual Property Rights; (H) not transmit through the Services, through feedback or otherwise, any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature; and (I) not bypass or disable any security mechanisms in the Services.

## **POSTING INFORMATION:**

MX allows, or may allow in the future, users to post content at the help desk and/or various publicly available locations. These forums may be hosted by us or by a third party. Wherever you can post information you agree:

- A. You are responsible for all content you submit on the Services.
- B. By submitting content to the Services, you represent that you have all necessary rights and hereby grant MX a perpetual, worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to use, reproduce, distribute, prepare derivative works of, modify, display, and perform all or any portion of the content in connection with the Services.

- C. You may not post or transmit any message that is libelous, defamatory, violates any Law or which discloses private or personal matters concerning any third party.
- D. You may not post or transmit any message, data, image or program that is indecent, obscene, pornographic, harassing, threatening, abusive, hateful, racially or ethnically offensive; that encourages conduct that would be considered a criminal offense, gives rise to civil liability or violates any Law; or that is otherwise inappropriate.
- E. You may not copy or use personal identifying information or business contact information about others without their permission.
- F. You may not post or transmit any message, data, image or program that would violate the rights of others, including unauthorized copyrighted text, images or programs, trade secrets or other confidential information, and trademarks or service marks used in an infringing fashion.

#### **REQUIRED EQUIPMENT:**

You are responsible for obtaining and, as applicable, installing, configuring and updating a computer, operating system, web-browsing software, Internet service and connection and such other equipment, software and services as may be necessary for you to access the Services. MX makes no warranties that your equipment or third-party software is or will continue to be compatible with the use of the Services.

#### **DISCLAIMER:**

The Services provided by MX are designed to provide accurate and authoritative information in regard to the subject matter covered they are however not intended to provide legal, tax or financial advice. The Services, or certain portions and/or functionalities thereof, are provided as strictly educational in nature and are provided with the understanding that MX is not engaged in rendering accounting, investment, tax, legal, or other professional services. If legal or other professional advice including financial, is required, the services of a competent professional person should be sought. MX specifically disclaim any liability, loss, or risk which is incurred as consequence, directly or indirectly, of the use and application of any of the content on this site.

MX and its third party providers are not responsible for any investment decisions or any damages or other losses resulting from decisions that arise in any way from the use of the Services or any materials or information accessible through it. Past performance does not guarantee future results. Further, MX and its third party providers do not warrant that the Services comply with the requirements of the FINRA or those of any other organization anywhere in the world.

#### **PROPRIETARY RIGHTS:**

You are permitted to use content delivered to you through the Services only in connection with the Services. You acknowledge and agree that MX and/or its licensors or suppliers own all rights to the Site and the Services, the content displayed on the Site and the Services including its "look and feel" (e.g., text, graphics, images, logos and button icons), photos, editorial content, notices, and other Intellectual Property Rights, made available to you as a part of or in conjunction with the Services. You are only permitted to use any of the foregoing as expressly authorized by these Terms. MX, and all other names, logos, icons and marks identifying MX's products and services are MX's trademarks and may not be used without our prior written consent. You may not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels on any portion of the Services.

#### **USER RISKS:**

MX acts solely as an operator of the Services for your convenience and use of the Services, and any reliance by you upon any content or information available to you through the Services (the "Materials"), including any action taken by you because of such use or reliance, is at your sole risk. Neither MX nor any

of its affiliates, third-party providers, partners, licensors, employees, distributors or agents is responsible or liable for, or makes any representations or warranties as to the following, without limitation:

- A. Any representations, promises, recommendations or inducements that may be made by or through any party (including vendors) found at, on, through or from the Services;
- B. The timeliness, accuracy, reliability, completeness, legality, copyright compliance or decency of the Services or any Materials;
- C. Any inaccuracy, omission, error or delay in the Services or any Materials;
- D. Non-performance of or interruption to the Services or any Materials due to, without limitation: (i) any act or omission by any disseminating party, (ii) any force majeure or any other cause beyond the control of any disseminating party, or (iii) outages, transmission quality or malfunctions of telephone circuits or computer systems, including any defects or failures with respect to your software, computer systems or Internet access provider;
- E. The quality of the Services or any Materials (including the results to be obtained from use of them); or
- F. Any loss resulting from, including any unauthorized access by a third party, arising out of or related to your access and/or use of or interaction with the Services or the Materials.

#### **MODIFICATIONS:**

MX reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to you. Such modifications may include establishing or changing limits concerning use of the Services, temporarily or permanently, including (i) any features, licensing terms, or other characteristics of any version of the Services that it releases, (ii) the amount of storage space you have on the Services at any time, and (iii) the number of times (and the maximum duration for which) you may access the Services in a given period of time. We reserve the right to make any such changes effective immediately to maintain the security of the system or Account Information or to comply with any Laws. You may reject changes by discontinuing use of the Services to which such changes relate. Your continued use of the Services will constitute your acceptance of and agreement with such changes. User access and use of the Services may be interrupted from time to time, including due to the malfunction of equipment, periodic updating, maintenance or repair of the Site and/or the Services or other actions that MX, in its sole discretion, may elect to take. Maintenance upon the Services may be performed from time to time resulting in interrupted service, delays or errors in the Services. MX shall not be liable to you or any third party should we exercise our right to modify or discontinue the Services.

#### **CANCELLATION:**

You may cancel your MX access at any time by contacting an Ent Credit Union representative at (719)-574-1100 or 800-525-9623. Upon confirmation of your request, your MX account will be deleted and no longer accessible from your online banking account, and your access to the MX Services will be deleted. Some of your information may remain stored within MX Services after account deletion for record keeping purposes.

MX may at any time terminate your access to the Services for any reason, including:

- A. you have breached any provision of these Terms (including the MX Privacy Notice, or have acted in a manner which shows you do not intend to, or are unable to, comply with the provisions of these Terms and/or the MX Privacy Notice);
- B. MX is required to do so by Law (for example, where the provision of the Services to you is, or becomes, unlawful);

- C. a partner with whom MX offered the Services to you has terminated its relationship with MX or ceased to offer the Services to you;
- D. MX is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the Services;
- E. You have not logged into your account and/or the Services for 180 or more continuous days; or
- F. the provision of the Services brought to you by MX is, in MX's sole opinion, no longer commercially viable.

#### **EXPORT RESTRICTIONS:**

The Services and underlying information, software and technology are subject to U.S. export controls. None of the Services or underlying information, software or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country subject to U.S. sanctions applicable to the export or re-export of goods; or (ii) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons List, or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or Nonproliferation Sanctions List. By using the Services, you agree to the foregoing and you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list, and that you acknowledge you are responsible to obtain any necessary U.S. government authorization to ensure compliance with U.S. law.

#### **USE BY THE U.S. GOVERNMENT:**

The Services provided under these Terms are a commercial item, as defined in FAR 2.101; specifically, one or more commercial computer software programs developed exclusively at private expense, used for nongovernmental purposes, and licensed to the public. Any use by the U.S. Government of the Services shall be in accordance with this Agreement, as stated in FAR 12.212. If the U.S. government is deemed to have use rights under FAR 52.227 or DFARS 227, all use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19, and all use, duplication and disclosure by Department of Defense agencies is subject solely to the terms of this Agreement, as stated in DFARS 227.7202. The manufacturer of the Services is MX Technologies, Inc., whose corporate headquarters is located at 3401 North Thanksgiving Way, Suite 500, Lehi, Utah 84043 and whose telephone is (801) 669-5500.

#### **FEEDBACK:**

You have no obligation to give MX any suggestions, enhancement requests, recommendations, comments or other feedback ("Feedback") relating to the Services. To the extent we receives any Feedback from you, we may use and include any Feedback that you choose to voluntarily provide to improve the Services or any other related technologies. Accordingly, if you provide Feedback, you agree that such Feedback will become MX's proprietary information and MX and its affiliates, third-party providers, partners, employees, distributors, agents and other authorized entities may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Services or other related technologies.

#### **COMMUNICATION:**

We will communicate with you by email, text or by posting notices on the Site or through the Services. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communication be in writing. Electronic alerts will be sent via text, email or notification through the Services (in the case of email and text, to the email address or phone number you provided when registering for the Services). Your consent to receive communications electronically is valid until you revoke your consent notifying us of your decision to do so. If you revoke your consent to receive communications electronically, we may terminate your right to use the Services.



You understand and agree that any alerts provided to you through the Services may be delayed or prevented by a variety of factors. While MX will use commercially reasonable efforts to provide timely and accurate alerts, we neither guarantee the delivery or accuracy of the content of any alert. You agree that MX shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you; or any third party reliance on an alert. Automatic alerts may be sent to you updating you to certain changes to your account. Voluntary alerts may be turned on by default. Voluntary alerts may then be customized, deactivated or reactivated by you.

If you request customer service or other assistance from MX, you acknowledge and agree that MX is authorized to access and view your Account Information to provide such assistance and support.

#### **ENDORSEMENTS:**

All products and service marks contained on or associated with the Services that are not MX marks are the trademarks of their respective owners. References to any names, marks, products or services of third parties or hypertext links to third-party sites or information do not constitute or imply MX's endorsement, sponsorship, guarantee or recommendation of the third party, information, products or services.

#### **DISCLAIMERS OF WARRANTIES:**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) YOUR USE OF THE SERVICES, THE SITE, AND ALL INFORMATION, PRODUCTS, SERVICES, AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM THE SERVICES OR THE SITE IS AT YOUR SOLE RISK; (b) THE SERVICES, THE SITE, AND ALL CONTENT AND PRODUCTS ASSOCIATED WITH MX ARE BEING PROVIDED "AS IS" AND "AS AVAILABLE"; (c) TO THE MAXIMUM EXTENT PERMITTED BY LAW, MX, its affiliates, and our and their respective third-party providers, partners, licensors, employees, distributors and agents DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE SITE, THE SERVICES AND ANY THIRD-PARTY SERVICES, IN WHOLE OR IN PART, INCLUDING (i) ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, FUNCTIONALITY, TITLE AND NON-INFRINGEMENT, (ii) REPRESENTATIONS AND WARRANTIES THAT THE SITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE SECURE, THAT THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIALS PURCHASED OR OBTAINED BY YOU THROUGH THE SITE AND/OR THE SERVICES WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS, AND THAT ANY ERRORS IN THE TECHNOLOGY WILL BE CORRECTED, (iii) REPRESENTATIONS AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING AND COURSE OF PERFORMANCE, (iv) ANY WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATED TO THE COMPREHENSIVENESS, COMPLETENESS, CORRECTNESS, LEGALITY, RELIABILITY OR ACCURACY OF THE SERVICES OR THIRD-PARTY SERVICES, IN WHOLE OR IN PART, (v) ANY WARRANTY THAT THE SERVICES WILL BE SECURE, UNINTERRUPTED, TIMELY, VIRUS-FREE OR ERROR-FREE, AND (vi) WARRANTIES RELATED TO THE ACCURACY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES, THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, THE CORRECTION OF DEFECTS IN THE SERVICES, OR THAT THE SERVICES WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE OR SOFTWARE; (d) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE SITE AND/OR THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK; (e) YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF THE SERVICES OR THIRD-PARTY SERVICES; AND (f) THE CURRENT STATE OF THE SITE AND THE SERVICES DOES NOT ALLOW FOR ERROR-FREE USE OF THE SERVICES AND THAT INTERRUPTIONS, CRASHES, DOWNTIME AND DELAY IN SERVICES MAY OCCUR.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MX THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**LIMITATIONS ON LIABILITY:**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, MX, its affiliates, and our and their respective third-party providers, partners, licensors, employees, distributors and agents SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES, CLAIMS OR LOSSES INCURRED, INCLUDING COMPENSATORY, INCIDENTAL, INDIRECT, DIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, INCLUDING DAMAGES FOR TELECOMMUNICATION FAILURES, LOSS, CORRUPTION, SECURITY OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF PRIVACY, OR PECUNIARY LOSS ARISING OUT OF YOUR USE OR YOUR INABILITY TO USE THE SERVICES; ARISING IN CONNECTION WITH YOUR USE OF THE SITE OR THE SERVICES, INCLUDING ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION IN YOUR USE OF THE SERVICES; ANY ACT OR OMISSION BY US IN ADMINISTERING THE SITE OR THE SERVICES; OR THE PURCHASE OR USE OF ANY GOODS OR SERVICES OF MERCHANTS OR SUPPLIERS THROUGH THE SITE OR THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CLAIMS, OR LOSSES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. WE ASSUME NO RESPONSIBILITY FOR ANY DAMAGE CAUSED BY YOUR ACCESS OR INABILITY TO ACCESS THE SITE OR THE SERVICES.

THE LIMITATIONS OF DAMAGES SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN MX AND YOU. MX WOULD NOT BE ABLE TO PROVIDE THE SERVICES WITHOUT SUCH LIMITATIONS. THIS LIMITATION OF DAMAGES IS AGREED TO BY YOU AND MX AND SURVIVES A FAILURE OF ITS ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW LIMITATIONS ON INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**INDEMNIFICATION:**

You agree, at your expense, to defend, indemnify, hold harmless, protect and fully compensate MX, its affiliates, and their respective officers, directors, employees, consultants, agents, distributors, partners, licensors and third-party providers from any and all claims, liability, damages, losses, expenses and costs (including attorneys' fees) caused by or arising from (a) a third-party claim, action or allegation of infringement based on your use of the Service or information, data, files or other content you submitted or uploaded; (b) any fraud, manipulation, or other violation of Law by you; (c) a breach of these Terms by you; (d) your acts or omissions; or (e) any third-party claim, action or allegation brought against MX arising out of or relating to a dispute between its users over the terms and conditions of a contract or related to the purchase and sale of any services. For the avoidance of doubt, if you are a business entity, your obligations hereunder shall extend to indemnification based on the acts and omissions of your employees, consultants and agents.

**NO WAIVER:**

MX shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by MX. No delay or omission on the part of MX in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a waiver of any rights or remedies on future occasions.

**EXCLUSIVE AGREEMENT:**

You agree that these Terms are the complete and exclusive agreement between you and MX. These Terms supersede any proposal or prior agreement, oral or written, and any other communications between you and MX relating to the subject matter of these Terms. These Terms, as the same may be amended from time to time, will prevail over any subsequent oral communications between you and MX.

## **MISCELLANEOUS:**

You agree and acknowledge that if you breach these Terms, MX may have no adequate remedy at law and will suffer irreparable harm as a result of such a breach and will therefore be entitled to injunctive relief without the obligation of posting a bond.

The titles and headings of these Terms are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth herein. Each covenant and agreement in these Terms shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of these Terms to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of these Terms shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by Law. All covenants, agreements, representations and disclaimers as to warranties and limitations on liability made in these Terms shall survive your acceptance of these Terms and the termination of these Terms.

MX may modify these Terms, at any time and without notice to you, by delivering such amended terms to the email address you provide to MX at the time of registration or that you subsequently updated, or by posting updated Terms on the Site. You manifest your acceptance of such amended terms if you continue to use or access the Services after such amended terms have been delivered to you by email or posted. If you do not agree with such amended terms, your only remedy is to discontinue your use of and access to the Services pursuant to these Terms. Otherwise, these Terms may not be amended except in writing signed by MX and you.

For all purposes of these Terms, except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined herein include the plural as well as the singular and vice-versa; (ii) all headings are for convenience only and shall not affect the interpretation or construction of these Terms; and (iii) the words "including," "included" and "includes" mean inclusion without limitation.

## **CHOICE OF LAW AND FORUM FOR DISPUTES:**

By visiting or using the Site and/or the Services, you agree that the laws of the State of Utah, without regard to principles of conflict of laws, will govern these Terms. To the extent that these Terms conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by Law. You agree that any claim or dispute of any sort that might arise between you and MX, its officers, directors, employees, agents or affiliates must be brought in Salt Lake County or Utah County, Utah, subject to applicable jurisdictional requirements in any such action or proceeding. You irrevocably waive any objection to such venue. You understand that, in return for your agreement to this provision, MX is able to offer the Services as these Terms designate and that your assent to this provision is an indispensable consideration to these Terms.

You also acknowledge and agree that, with respect to any dispute with MX, its officers, directors, employees, agents or affiliates, arising out of or relating to your use of the Services or these Terms: (i) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY; and (ii) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING SUCH DISPUTE.