

Datamarx Terms of Service

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Welcome, and thank you for your interest in Datamarx, Inc. ("**Datamarx**," "**we**," or "**us**") and our website at www.mymarx.io, along with our related websites, mobile applications, browser extensions, widgets and other services provided by us (collectively, the "**Service**"). These Terms of Service are a legally binding contract between you and Datamarx regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY CLICKING "I ACCEPT," INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS (THESE "**TERMS**"). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND DATAMARX'S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY DATAMARX AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 17, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND DATAMARX ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 17.)

1. **Datamarx Service Overview.** Through our Service, we allow you to earn Digital Loyalty Points for opting into Marketing services by our brands. Our Service allows you to access discounts based off of data that we collect from your engagement with our Service and your web browsing activities ("**Service Data**," collectively with Third Party Service Data, "**Your Data**") in exchange for MARX (as defined in Section 5).
2. **Eligibility.** You must be at least 18 years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they

have authority to bind you to these Terms and you agree to be bound by these Terms.

3. **Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, e-mail address, phone number, profile photo, username, and demographic information, such as age and gender. We may ask you to provide additional profile information after you have registered for an account. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at info@mymarx.io.

4. **Your Data**

- 4.1 You grant us permission to use, copy, reproduce, modify, prepare derivative works of and otherwise process Your Data on a royalty-free and worldwide basis (a) in connection with our provision of the Service to you, and (b) perpetually and irrevocably, in any manner including in combination with other data, provided that Your Data is aggregated and anonymized.
- 4.2 You grant us permission to sublicense Your Data to allow our Partners to use, copy, reproduce, modify, prepare derivative works of and otherwise process Your Data on a non-exclusive, royalty-free, worldwide basis during the Term for our Partners' internal business purposes.
- 4.3 By providing Third Party Service Data via the Service, you affirm, represent, and warrant that you have the necessary licenses, rights, consents, and permissions to authorize Datamarx and our Partners to use and distribute Third Party Service Data as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Datamarx, the Service, and these Terms.

5. **MARX**

- 5.1 You may obtain Datamarx's virtual currency ("**MARX**"): (i) when you opt-in to get targeted offers from our Partners; (ii) when you provide optional information such as answers to survey questions on the Service ("**Questions**"); (iii) by referring others to the Service; and (iv) through such other methods as Datamarx may offer from time to time. We may give you

the opportunity to use MARX to obtain gift cards, discounts or other rewards and make donations to certain charities (together “**Rewards**”). MARX are not real money, do not have monetary value, and may never be redeemed for “real world” money, or other items of monetary value from outside the Service without our written permission. While we may use terms like “earn”, “trade-in”, or “cash-out” in reference to the MARX, we do so only for convenience and such terms in no way indicate that MARX have monetary value or are real money. You acknowledge that MARX are not real currency and are not redeemable for any sum of money from us at any time. We make no guarantee as to the nature, quality, or value of the features of the Service or any third-party good or services that will be accessible through the use of MARX, or the availability or supply of MARX. MARX obtained via the Service are provided to you under a limited, personal, revocable, non-transferable, non-sublicenseable license to use such MARX within the Service. MARX and Rewards may not be transferred to other accounts or resold in any manner, including, without limitation, by means of any direct sale or auction service. Rewards may be subject to a separate third-party license or agreement. Except as specifically provided to you in writing by a third party as to third-party Rewards, you have no property interest, right or title in or to any such MARX or Rewards appearing or originating in the Service or any other attributes associated with use of the Service. Any “virtual currency” balance shown in your account does not constitute a real-world balance or reflect any stored value, but instead constitutes a measurement of the extent of your license.

All MARX are forfeited if your account or access to the Service is terminated or suspended for any reason, in our sole and absolute discretion, or if we discontinue availability of some or all of the Service. We may at any time expire free or promotional MARX given to you.

We have no liability for hacking or loss of your MARX or any goods or services obtained using MARX. We have no obligation to, and will not, reimburse you for any MARX or Rewards that are lost due to your violation of these Terms. We reserve the right, without prior notification, to limit the quantity of MARX or Rewards and to refuse to provide you with any MARX or Rewards. Price, exchangeability and availability of MARX and Rewards are determined by us in our sole discretion and are subject to change without notice. You agree that we have the absolute right to manage, distribute, regulate, control, modify, or eliminate MARX as we see fit in our sole discretion, and that we will have no liability for exercising such right.

You agree that under no circumstances are we liable to you for any damages or claims that may arise from the loss or use of your MARX regardless of the circumstances. You absolve us of any responsibility to maintain or update your account MARX or Rewards balance. However, if there is a loss of MARX in your account due to technical or operational problems with the Service, we will refund the lost MARX once the loss has been verified. Without limiting any of the foregoing, our maximum liability or responsibility to you is to refund the MARX lost.

- 5.2 **Redeeming MARX.** You may from time to time be presented with opportunities to redeem MARX for Rewards through the marketplace on the Service. The marketplace is not open as of the date of these Terms, but may be open in the future (in our discretion). We will, in our sole discretion, determine and communicate the availability and exchange rate for any MARX and Rewards, which may be modified at any time. You must comply with any individual or additional Reward limitations or terms as indicated via the Service or our Partners' terms and conditions. If you redeem MARX for a donation to a charity, we may retain a portion of the redemption as a service charge. We reserve the right to cancel, restrict or terminate MARX or Rewards at any time for any reason. All Rewards are subject to availability. All redemptions are subject to these Terms, any third-party terms associated with a Reward, and all limitations and requirements stated via the Service.

You may choose a Reward that is still available for which you have accumulated sufficient MARX for redemption. Select the Reward you wish to use and follow the applicable instructions to complete the redemption process.

All acquisitions of MARX and redemptions for Rewards are final. Once MARX have been lost or spent, they will be subtracted from your account and cannot be refunded or returned, except in our sole discretion. No MARX will be re-credited to your account in the event of a return or exchange of a Reward, or any problem with any Rewards.

6. Licenses

- 6.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Datamarx grants you, solely for your personal, non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (a) install and use one object code copy of any mobile application associated with the Service obtained from a legitimate marketplace (whether installed by you or pre-installed on your

mobile device by the device manufacturer) on a mobile device that you own or control; and (b) access and use the Service.

6.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

6.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service ("**Feedback**"), then you hereby grant Datamarx an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

7. **Ownership; Proprietary Rights.** The Service is owned and operated by Datamarx. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service ("**Materials**") provided by Datamarx are protected by intellectual property and other laws. All Materials included in the Service are the property of Datamarx or its third party licensors. Except as expressly authorized by Datamarx, you may not make use of the Materials. Datamarx reserves all rights to the Materials not granted expressly in these Terms.

8. **Third Party Terms**

8.1 **Third Party Services and Offers.** You may have an opportunity to answer Questions or take advantage of certain offers from third party services. Any other correspondence, business dealings, or interactions with, or participation in promotions with any third party service and any other terms, conditions, warranties or representations associated with such dealings, are subject to terms imposed by those third party services. You are required to comply with all terms imposed by those third party services, and any dispute between you and a third party service does not involve us in any way. Third party services are not under Datamarx's control, and, to the fullest extent permitted by law, Datamarx is not responsible for any third party service's use of Your Data. Your interactions and business dealings with third party services, including products or services offered by such third parties, are solely between you and the third party. You should review all of the relevant terms and conditions associated with the third party services, including any privacy policies and terms of service. If you enter into any transactions with any

third party services featured on the Service, Datamarx may be entitled to a commission fee in connection with such transaction.

- 8.2 **Third Party Services and Linked Websites.** Datamarx may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your account on Datamarx with an account on the third party service, such as Twitter or Facebook, or through our implementation of third party buttons (such as “like” or “share” buttons). By using one of these tools, you agree that Datamarx may transfer that information to the applicable third party service. Third party services are not under Datamarx’s control, and, to the fullest extent permitted by law, Datamarx is not responsible for any third party service’s use of your exported information. The Service may also contain links to third party websites. Linked websites are not under Datamarx’s control, and Datamarx is not responsible for their content.
- 8.3 **Third Party Software.** The Service may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“**Third Party Components**”). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.

9. User Content

- 9.1 **User Content Generally.** Certain features of the Service may permit users to upload content to the Service, including answers to Questions, messages, reviews, photos (including your own photos), video, images, data, text, and other types of works (“**User Content**”) and to publish, publicly display or publicly perform User Content on the Service. When you post User Content to the Service, other users and our Partners will be able to see it and any other information that you choose to make public on your profile.
- 9.2 **Limited License Grant to Datamarx.** By providing User Content to or via the Service, you grant Datamarx a worldwide, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.

- 9.3 **Limited License Grant to Other Users.** By providing User Content to or via the Service to other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.
- 9.4 **User Content Representations and Warranties.** Datamarx disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant that:
- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Datamarx and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Datamarx, the Service, and these Terms;
 - b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Datamarx to violate any law or regulation; and
 - c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.
- 9.5 **User Content Disclaimer.** We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. Datamarx may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Service, you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Datamarx with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Datamarx does not permit copyright-infringing activities on the Service.

- 9.6 **Monitoring Content.** Datamarx does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Datamarx reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Datamarx chooses to monitor the content, Datamarx still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

10. **Prohibited Conduct.** BY USING THE SERVICE, YOU AGREE NOT TO:

- a. use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- b. harass, threaten, demean, embarrass, or otherwise harm any other user of the Service;
- c. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- d. interfere with security-related features of the Service, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;
- e. interfere with the operation of the Service or any user's enjoyment of the Service, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Service; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
- f. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Service account without permission;
- g. sell or otherwise transfer the access granted under these Terms or any Materials or any right or ability to view, access, or use any Materials; or

- h. attempt to do any of the acts described in this Section 10 or assist or permit any person in engaging in any of the acts described in this Section 10.

11. Intellectual Property Policy

General. If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our Designated Agent at the following email address: info@mymarx.io.

Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include substantially the following:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the right being infringed;
- b. a description of the intellectual property that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the Service;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the intellectual property owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the intellectual property owner or authorized to act on the intellectual property owner's behalf.

- 11.2 **Repeat Infringers.** Datamarx's intellectual property policy is to: (a) remove or disable access to material that Datamarx believes in good faith, upon notice from an intellectual property rights owner or his or her agent, is infringing the intellectual property rights of a third party by being made available through the Service; and (b) in appropriate circumstances, to terminate the accounts of and block access to the Service by user who repeatedly or egregiously infringe other people's copyrights or other intellectual property rights.

12. **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 12, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

13. **Term, Termination and Modification of the Service**

13.1 **Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 13.2.

13.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Service and these Terms automatically terminates. In addition, Datamarx may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at info@mymarx.io.

13.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; and (c) Sections 4, 6.2, 6.3, 7, 9, 10, 11, 13.3, 14, 15, 16, 17 and 18 will survive.

13.4 **Modification of the Service.** Datamarx reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Datamarx will have no liability for any change to the Service or any suspension or termination of your access to or use of the Service.

14. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify Datamarx and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the "**Datamarx Entities**") from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Service; (b) your violation of any portion of these Terms, any representation,

warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

15. Disclaimers; No Warranties

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. DATAMARX DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. DATAMARX DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DATAMARX DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR DATAMARX ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE DATAMARX ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Datamarx does not disclaim any warranty or other right that Datamarx is prohibited from disclaiming under applicable law.

16. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE DATAMARX ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY DATAMARX ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 17.5 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE DATAMARX ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

17. **Dispute Resolution and Arbitration**

- 17.1 **Generally.** In the interest of resolving disputes between you and Datamarx in the most expedient and cost effective manner, and except as described in Section 17.2 and Section 17.3, you and Datamarx agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND DATAMARX ARE EACH WAIVING

THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- 17.2 **Exceptions.** Despite the provisions of Section 17.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 17.3 **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 17 within 30 days after the date that you agree to these Terms by sending a letter to Datamarx, Inc., Attention: Legal Department – Arbitration Opt-Out, 1 World Trade Center that specifies: your full legal name, the email address associated with your account on the Service, and a statement that you wish to opt out of arbitration (“**Opt-Out Notice**”). Once Datamarx receives your Opt-Out Notice, this Section 17 will be void and any action arising out of these Terms will be resolved as set forth in Section 17.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
- 17.4 **Arbitrator.** Any arbitration between you and Datamarx will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Datamarx. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 17.5 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). Datamarx’s address for Notice of Arbitration is: Datamarx Inc., 1 World Trade Center. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Datamarx may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any

settlement offer made by you or Datamarx must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Datamarx in settlement of the dispute prior to the award, Datamarx will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

- 17.6 **Fees.** If you commence arbitration in accordance with these Terms, Datamarx will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New York, New York, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Datamarx for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- 17.7 **No Class Actions.** YOU AND DATAMARX AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Datamarx agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- 17.8 **Modifications to this Arbitration Provision.** If Datamarx makes any future change to this arbitration provision, other than a change to Datamarx's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Datamarx's address for Notice of Arbitration, in which case your account with

Datamarx will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

- 17.9 **Enforceability.** If Section 17.7 is found to be unenforceable or if the entirety of this Section 17 is found to be unenforceable, then the entirety of this Section 17 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 18.2 will govern any action arising out of or related to these Terms.

18. Miscellaneous

- 18.1 **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Datamarx regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to”. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 18.2 **Governing Law.** These Terms are governed by the laws of the State of New York without regard to conflict of law principles. You and Datamarx submit to the personal and exclusive jurisdiction of the state courts and federal courts located within New York, New York for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in New York, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 18.3 **Privacy Policy.** Please read the Datamarx Privacy Policy carefully for information relating to our collection, use, storage, disclosure of your personal information, including with respect to the collection of your location information. The Datamarx Privacy Policy is incorporated by this reference into, and made a part of, these Terms.

- 18.4 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (collectively, the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 18.5 **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 18.6 **Messages.** You may be able to send messages to others through certain functionality on the Service, including inviting your friends to use the Service by sending them a text message through your mobile device. If you choose to invite your friends, we may ask you to provide us with access to certain contact information in your mobile device’s address book. You represent and warrant that: (i) you will only send messages to others who have given you their express consent to receive messages; (ii) you, and only you, are responsible for sending messages and Datamarx merely acts as a technology platform; and (iii) you will indemnify and hold Datamarx harmless from any and all claims arising out of your messages. You are responsible for all fees and charges associated with your messages. If a recipient of messages you send requests that we prevent you from sending additional messages to them through the Service, then we will abide by such recipient’s request and block you (and other users of the Service) from sending messages to such persons.
- 18.7 **Contact Information.** The Service is offered by Datamarx Inc., located at 1 World Trade Center. You may contact us by sending correspondence to that address or by emailing us at info@mymarx.io.
- 18.8 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.

- 18.9 **No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.
- 18.10 **International Use.** The Service is intended for visitors located within the United States. We make no representation that the Service is appropriate or available for use outside of the United States. Access to the Service from countries or territories or by individuals where such access is illegal is prohibited.
19. **Notice Regarding Apple.** This Section 19 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Datamarx only, not with Apple Inc. ("**Apple**"), and Apple is not responsible for the Service or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the Service infringe a third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Service. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.