



TennisSource Master Service Agreement

The services provided to the Customer (“you” or “Customer”) identified in the Order Form are subject to your assent to the terms and conditions contained in the Order Form and the terms and conditions of this Service Agreement entered into between Daxko, LLC d/b/a TennisSource and any of its direct or indirect affiliates (“Company”) and you, together with any other terms and conditions which may be incorporated by reference herein or therein (collectively, the “Agreement”), which together constitute a binding legal agreement between the Customer and Company.

YOU ACCEPT THESE TERMS AND CONDITIONS BY (1) SIGNING THE ORDER FORM BETWEEN YOU AND COMPANY INTO WHICH THESE TERMS AND CONDITIONS ARE INCORPORATED BY REFERENCE OR (2) ACTUALLY ACCESSING OR USING THE SERVICES. THE TERMS AND CONDITIONS STATED HEREIN MAY BE UPDATED AND REVISED FROM TIME TO TIME. YOU AGREE THAT SUCH UPDATED AND REVISED TERMS OF USE SHALL BE EFFECTIVE AS OF THE DATE YOU ARE PROVIDED NOTICE OF THE UPDATED AND REVISED TERMS AND ACCEPT THE SAME IN ACCORDANCE WITH THE PRECEDING PROCESS.

1. DESCRIPTION OF SERVICES

All Services will be provided to Customer or other Customer Users (defined below) over the internet and, subject to and conditioned on Customer’s and its Customer Users’ compliance with the terms of this Agreement, Company will use commercially reasonable efforts to make the Services available to Customer or any applicable Customer User at all times in accordance with the terms of this Agreement. Customer must provide a stable internet connection required for the Services to function properly. As used herein, “Customer User” shall mean a named or specified (by password and other appropriate user identification) employee of Customer authorized by Customer to use certain Services related to Company’s mobile application, user portal, and similar software and services. Company is not responsible for Customer’s or its Customer Users’ system performance or system inaccessibility, or any loss of business resulting therefrom, due to schedule downtime or maintenance, or any factors outside of Company’s control or unrelated to the Services. Customer and its Customer Users are responsible for the security regarding their respective passwords, access and usage of the Services. During the Term of the Agreement, Company agrees to provide Customer with all fixes, upgrades and new releases of the Services licensed under this Agreement which are made generally available to all Company customers at no additional charge. Company may, in Company’s sole discretion, release other modules, updates, upgrades and new releases for an additional fee. Customer agrees that Customer’s obligations hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features. Pursuant to the terms and conditions of this Agreement, Company will provide the Services described in the Order Form, including the following:

- a. **License for Services Selected.** Subject to the terms and conditions of this Agreement and the performance by Customer of its obligations under this Agreement, Company grants to Customer a non-exclusive, revocable, non-transferable, non-sublicensable license during the Term of this Agreement for Customer Users to access and use, for Customer’s internal business purposes, the Services as described in the Order Form.
- b. **Data Conversion.** For the provision of certain services, Company may provide data conversion services necessary to convert Customer’s membership demographic, billing information delivered in a format determined by Company. Customer will be given a template to which the format of the data must adhere. Customer agrees to obtain any and all rights of access required by any third party, with respect to Customer’s data and existing software systems, in order for Company to perform its Services under this Agreement, and agrees to provide Company with access to Customer’s operations during normal business hours or at such other times and days as may be mutually agreed to by the parties, in order to perform data conversion under this Agreement. As part of Company best practices, six (6) months after the data conversion process is completed, Company may irrevocably destroy any copies of the legacy Customer data used in the data conversion process that are still in Company’s possession. Company will make commercially reasonable efforts to import data from Customer’s current software



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system, where available, to allow for use of such Customer data in providing the Services in accordance with Company's data conversion policies.

- c. **Transitions to an Affiliated Software.** For pre-existing Customers approved by Company to transition to a different Daxko-affiliated software, Customer agrees to first implement Daxko Payment Services on Customer's current software platform prior to beginning the software transition process unless otherwise agreed in writing.
- d. **Services.** Company will be responsible for the hosting, maintenance, and support of all Company -hosted software and Company -owned equipment used to perform Services. Customer acknowledges and agrees that as part of this Agreement, Customer shall arrange for, pay for, and maintain the communications lines between Company hosted servers and Customer's own equipment. Customer shall be solely responsible for establishing and maintaining the telecommunications connection of its choice at Customer's sole cost and expense. Customer acknowledges that Company (i) does not control communications via third party telecommunications providers and (ii) shall not be responsible for any error or inaccessibility associated with such telecommunications or any violation of law, rule or regulation applicable to transmission of data via such telecommunications. Company may use third party service providers to provide the Services to Customer.
- e. **Daxko Exchange (API).** Company may, if indicated in the Order Form or by a separate consent form, provide third parties with access to the Services (upon Customer request) for the purpose of facilitating the Services. The term API Service may include any secure means of data exchange including API access, FTP access, or other secure method.
- f. **Technical Support.** Company agrees to provide Customer with technical support for the Services during the Term of the Agreement as follows:
 - Phone and e-mail support provided for Customer's point of contact through a customer care center during normal business hours (7 a.m. to 7 p.m. CST Monday to Friday, exclusive of holidays). Customer's point of contact is the liaison between Company and Customer.
 - Acknowledgement responses during normal business hours.
 - System outages receive red-alert priority, which means that Company will provide immediate assistance (24 hours per day / 7 days per week) until such outage is resolved. If Customer experiences a system outage then Customer will contact Company at an emergency number available on Company's support website. Company will contact Customer regularly, providing status updates until final resolution.
 - Customer agrees that from time to time Company may perform periodic routine scheduled maintenance, which generally will occur between the hours of midnight and 5AM CST.
 - Customer shall promptly provide Company with detailed error notices describing all errors at a level of detail sufficient for Company to resolve errors, and Customer shall assist Company in recreating errors and resolving errors by providing Company with any requested information or material.

2. TERMS & CONDITIONS OF TRANSACTION PROCESSING

- a. **Customer's Obligations for Transaction Processing.** Customer is solely responsible for obtaining authorization from its customers ("Card Holder") to perform transactions. Customer is solely responsible for the accuracy and completeness of all data provided by Customer or its authorized users or Card Holders. Customer acknowledges



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and agrees that: (a) any transactions are between Customer and Customer's Card Holder; (b) Company is a third-party service provider and payment facilitator for Customer, and not a party to any transaction; (c) Company is not a buyer or seller in connection with any transaction; (d) Company will not be responsible for and does not control any aspect of the services provided by Customer; and (e) Customer is solely responsible for disputes with Card Holders regarding payments, and Company is not a party to and will not be responsible for any such disputes.

- b. **Transaction Processing Services.** Company collects and relays payment information generated in connection with payment transactions to process the transactions on behalf of Customer using the appropriate networks. Company, through Company Payment Services or a third-party provider, will establish a credit card or EFT transaction gateway to the designated merchant account to provide payment processing services to Customer. Customer acknowledges and agrees that Company or the third-party provider, as applicable, shall have the right to terminate services upon (i) request of Customer's payment processor or financial institution with which Customer has a merchant account or bank account; (ii) a good faith belief that providing services to Customer will violate a law, regulation or rule of any governmental authority; or (iii) if Customer violates any applicable law or regulation, or if as a result of Customer's use of the transaction gateway service, the provider or Company becomes the subject of an investigation by a law enforcement agency or are otherwise threatened with suit or prosecution. Customer acknowledges and agrees that its use of transaction processing services under this Agreement shall be subject to additional terms and conditions, including, without limitation, the terms and conditions of the merchant processing agreements entered into by Customer related to this Agreement. Customer shall maintain valid merchant processing agreements, including for Company Payment Services if selected in the Order Form, with providers approved by Company during the Term of this Agreement. Customer acknowledges that Company is subject to certain requirements imposed by its service providers, and such service providers may modify such requirements. In the event of any such modification, Company may modify the terms of this Agreement, provided that Customer (within ten (10) days of receiving notice of the modification) may elect, as its sole and exclusive remedy for such modification, to terminate the payment processing services provided under this Agreement with thirty (30) days' notice, but only if the modification materially and adversely affects Customer and Company is unable to rectify such situation, including by reverting to previously acceptable terms. The foregoing does not grant Customer any rights of termination with respect to any third-party agreements which may be entered into by Customer.
- c. **Data Transmission.** Customer acknowledges that Company is not a financial or credit reporting institution. Company is responsible only for providing data transmission to effect or direct certain payment authorizations for Customer (or its customers) and is not responsible for the results of any credit inquiry, the operation of websites or internet service providers, financial institutions, financial processors, the availability of the internet, or for any damages or costs that Customer may suffer or incur as a result of any instructions given, actions taken or omissions made by Customer or its authorized users, Customer's financial processor, financial institution, or internet service provider.
- d. **PCI DSS Compliance.** Company adheres to Payment Card Industry Data Security Standards ("PCI DSS"). Customer agrees to adhere with PCI DSS requirements with respect to any handling of cardholder data. Customer shall be solely responsible for any and all liability related to the handling of cardholder data by Customer or its users. Company reserves the right to temporarily suspend access to the Services in order to minimize threats to the security and to protect operational stability and security of the Services. Company does not guarantee the security



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of the Services and will not be responsible for any infiltration of its security systems so long as Company has used commercially reasonable efforts to prevent such infiltration. In no event will Company be liable for transaction processing or other services performed by any third party.

3. TERMINATION; SUSPENSION:

This Agreement may be terminated or suspended as follows:

- **Upon Termination of Merchant Processing Agreement(s):** In the event that one or more of Customer's merchant processing agreement(s) or Merchant Processing Statements (collectively "MPA"), including any agreement(s) for Company Payment Services, is terminated with the credit card or EFT payment processor utilized in connection with this Agreement, Company may, in Company's sole discretion, elect to terminate this Agreement, or only such portions of this Agreement which are applicable to the payment processing services, and be relieved of any and all of its obligations relating thereto upon written notice to Customer.
- **Termination for Unlawful Use:** Company reserves the right to immediately terminate Customer's use of the Services, if Company, in its sole discretion, determines that Customer's use of the Services is unlawful or if Customer transmits any Prohibited Material (as defined herein).
- **Termination for Insolvency:** This Agreement shall be deemed terminated immediately in the event that:
 - Customer files a petition in bankruptcy, makes an assignment for the benefit of its creditors, petitions for the appointment of a receiver or trustee for all or a portion of Customer's property, or dissolves or liquidates; or (ii) a petition for bankruptcy is filed against Customer, or a receiver or trustee is appointed for all or a portion of Customer's property; or (iii) Customer admits in writing its inability to pay debts when due. In the event of termination for insolvency of Customer, Company may block Customer's access to the Services, and in addition, may retain all payments made hereunder, and recover charges and costs owed by Customer, as well as any other damages Company may have sustained because of Customer's insolvency, including, but not limited to, attorney and collection agency fees.
- **Termination for Breach:** Either party may terminate this Agreement in the event of a material breach of this Agreement by the other party, if such breach remains uncured thirty (30) days after receipt of written notice thereof from the non-breaching party; provided, however, Company, notwithstanding such cure period, may require Customer to cease and discontinue use of the Services during the period of such material breach by Customer. No such termination shall relieve Customer's obligation to pay fees and miscellaneous charges accrued up to the effective date of the termination. Furthermore, in the event of early termination of this Agreement (other than due to material uncured breach by Company) prior to the expiration date of the Initial Term or any Renewal Term, Customer shall be obligated to pay to Company 100% of the fees that Company would have received if this Agreement had remained in effect until its scheduled expiration date (with the amount of each remaining month's fee being equal to the average monthly fee charged during the immediately preceding six (6) month period). Such fees shall be paid within thirty (30) days after the effective date of termination and prior to any release of Customer data from Company Service. Customer agrees that (a) a breach by Customer under this Agreement is a breach under all other agreements between Customer and Company, and a breach by Customer under any other agreement between Company and Customer is a breach of this Agreement, and (b) all other agreements between Customer and Company are amended to include this provision.
- **Suspension of Services:** Company may suspend Customer's access to the Services immediately, without notice, if: (i) certain third party licenses or access to third party components of the payment processing services are terminated; (ii) Customer causes or fails to fix a security breach; (iii) Company reasonably believes Customer's breach compromises the security of the payment processing services; (iv) Company reasonably believes fraudulent transactions are being submitted on Customer's account knowingly or negligently; (v) Customer's financial processor or financial institution requires such suspension; (vi) Customer fails to pay any fees when due and does not cure such failure within ten (10) days; (vii) Customer



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fails to upgrade to the most current software version, security updates and/or patches; or (viii) Customer fails to materially comply with this Agreement and does not cure such failure within ten (10) days.

4. ADDITIONAL PAYMENT TERMS

- a. **On-Site Expenses.** Customer will be billed for the expenses incurred in connection with the performance of any services, training, consulting or other services provided on-site at Customer's location (including in connection with launching the Services), including the reasonable travel and per day expenses of each trainer or consultant. Pre-scheduled services which are to be performed on-site at Customer's location may not be cancelled or re-scheduled within thirty (30) days of the beginning of such pre-scheduled services. In the event that Customer cancels or reschedules pre-scheduled on-site services within such thirty (30) day period, Customer shall be required to reimburse Company for any pre-paid non-cancellable pre-scheduled expenses associated with the on-site services.
- b. **Service Fees.** Customer shall pay monthly managed service fees in accordance with terms set forth in the Order Form.
- c. **Additional Fees.** Additional services are offered at the then current Company rate. Customer will provide authorization to Company before any additional services are performed. Additional services may include, but are not limited to, data conversion, additional training, programming, exit data fees, data extract fees, de-tokenization fees, marketing, and other professional services.
- d. **Past Due Payments; Late Fees.** Interest charges of one and a half percent (1.50%) per month (or the highest rate permissible under applicable law, if less) will accrue daily on all amounts not received by Company when due. In addition, Company shall be entitled to block Customer's access to Services (with or without terminating this Agreement or affecting Customer's obligation to make payments under this Agreement) if Customer is more than thirty (30) days delinquent on any payments under this Agreement or any other agreement with Company. The obligation to pay monthly managed service fees and all other amounts due hereunder is an independent, unconditional covenant, and under no circumstances shall Customer have any right to offset its payments to Company. If any amount owed by Customer under this Agreement or any other agreement with Company is sixty (60) or more days overdue, Company may, without limiting Company other rights and remedies, accelerate Customer's unpaid fee obligations under this and such other agreements so that all such obligations become immediately due and payable, and suspend Company's Services to Customer until such amounts are paid in full. If Customer does not turn in a completed Form A to Company when required by the Order Form, Company will apply late fees in the amount of five percent (5%) per month against the Customer's current monthly managed service fee until the completed Form A has been received.
- e. **Taxes.** Customer shall pay any and all applicable international, federal, state, and local sales, use, value-added, excise, duty, and any other taxes, fees or duties (other than taxes based on Company's net income) that are assessed on or as a result of the Services. Any such taxes, fees and duties collected by Company from Customer on behalf of a governmental agency shall not be considered a part of, a deduction from, or an offset against, payments due to Company for the Services hereunder.
- f. **Data Export.** Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer's data in accordance with



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Company's then-current data export policy at then current standard fees.

- g. **Statements for Fees.** Statements for the fees quoted herein will be sent via electronic mail to Customer within the first five (5) business days of the service month. If Customer does not dispute the statements within five (5) days of receipt, then Customer's designated bank account will be automatically debited on the fifteenth (15th) day of the month. Statements for one-time, training, and consulting fees and other reimbursable expenses will be sent via electronic mail to Customer following the performance of the services and will be automatically debited ten (10) days from the date of the statement if not contested. Company does not accept payment by check. All payments in the Agreement are denominated in United States dollars.

5. CUSTOMER RESPONSIBILITIES; COMPLIANCE WITH THE LAW

- a. **Authorized Representatives.** Customer agrees that it will only allow its Customer Users to have access to Services and that it shall be responsible for any use or misuse of Services by such persons.
- b. **Compliance with Law; Prohibited Material.** Customer represents and warrants that Customer will comply with all laws and regulations applicable to Customer's use of the Services and agrees to use Services only as permitted by applicable law, including but not limited to export control laws, intellectual property laws, financial services laws and regulations, communications laws and regulations, and all relevant state and federal privacy and/or data security laws. The transmission of any material in violation of applicable law is prohibited. This prohibition includes, but is not limited to, the transmission of copyrighted material without permission of the copyright holder and the transmission of threatening or obscene material or trade secrets.

BOTH PARTIES AGREE NOT TO POST OR TRANSMIT ANY UNLAWFUL, HARMFUL, THREATENING, ABUSIVE, HARASSING, DEFAMATORY, VULGAR, OBSCENE, PROFANE, HATEFUL, FRAUDULENT, LIBELOUS, PORNOGRAPHIC, RACIALLY, ETHNICALLY OR OTHERWISE OBJECTIONABLE MATERIAL OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY MATERIAL WHICH ENCOURAGES CONDUCT THAT WOULD CONSTITUTE A CRIMINAL OFFENSE, VIOLATE THE RIGHTS OF OTHERS, OR OTHERWISE VIOLATE ANY APPLICABLE LOCAL, STATE, NATIONAL OR INTERNATIONAL LAW ("PROHIBITED MATERIAL").

Company reserves the right to terminate Customer's use of Services, if Company, in its sole discretion, determines that Customer's use of Services is in violation of this Agreement, unlawful or inappropriate as described above. Notwithstanding the above, Company has no obligation to monitor any material posted through the Services. Any liability for any such inappropriate or unlawful material posted by Customer shall be Customer's. Customer agrees that all email addresses used by this service have been properly obtained and has followed all provisions of the CAN-SPAM Act (USA) or all Canadian Radio-television and Telecommunications Commission (CRTC) regulations (Canada).

- c. **Compliance with Privacy and Data Security Laws.** Customer will comply with all applicable federal, state and local laws, rules, regulations, governmental requirements and recognized self-regulatory principles and standards, with respect to privacy, data protection, confidentiality or security of Personal Information. "Personal Information" means any information relating to an identified or identifiable individual or information that when combined with other information, may identify an individual. In providing the Services, Customer shall provide Company with such cooperation, assistance, and information, and execute all documents as Company may reasonably request, to



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enable Company to comply with its obligations under applicable law. Customer further agrees not to use the Services to collect, manage, or process Personal Information, except with permission and to the limited extent required for the provision of services to Customer's customers. Customer further agrees that prior to collecting, managing or processing any information regarding children under the age of 16, Customer must obtain the consent of the holder of parental responsibility over the child. Customer represents and warrants that for Personal Information that Customer discloses to Company, or that is included in the Customer Data, Customer will comply with all laws, regulations, rules, Federal Trade Commission guidelines, and other publicly known industry best practices regarding the collection, disclosure, and use of any Personal Information, which may require Customer to provide customers and consumers with privacy notices and choices (for example, opt-outs regarding certain data sharing); and, that Customer will obtain all required consents from customers and consumers, and that Customer will also disclose to Company any required consents related to Company's use of that Personal Information under this Agreement. Customer agrees not to utilize the Services to store any protected health information. Customer will promptly and effectively communicate to Company, any consumer data deletion requests. Customer will otherwise assist and enable Company to discharge its duties as a service provider and/or data processor under applicable laws and regulations.

- d. **Privacy Notice.** Customer will provide notice, where required by law, informing its end users, including its member customers and customer users to whom the Customer Data (as defined below) relates about Company's collection, use, storage or other processing of Customer Data.

6. IMPLEMENTATION / SETUP / TRAINING

The deployment process for installation and training regarding Customer's use of the Services is set forth in the Order Form and a subsequent statement of work ("SOW".) The time for such installation and training is only an estimate and may be shorter or longer depending on the circumstances. Customer shall be responsible for the Startup and Training Costs set forth in the Order Form or SOW, which such costs are non-refundable and include the following:

- **Initial Setup:** Company will create a unique instance of the Services for Customer in accordance with applicable industry practice. The Customer instance ensures that Customer's data, users, business policies, and security policies are maintained separately. Company will also have staff available for specific questions pertaining to Customer's installation.
- Customer authorizes Company to withdraw the Startup and Training fee from the bank account indicated in its EFT Authorization Form due upon receipt of the executed Agreement. The fees specified above explicitly exclude the items described below, which shall be borne by Customer or separately reimbursed by Customer.
- **Reimbursable Expenses:** In addition to the fees set forth in this Agreement, Customer shall reimburse Company for out-of-pocket expenses, including travel expenses (flight, rental car, hotel, meals) incurred in providing any on-site training ("Reimbursable Expenses"). Training will be scheduled on dates and times mutually agreed to between the Parties. Once a mutually agreeable schedule is made, Company will notify Customer via email of the proposed schedule. If Customer cancels or reschedules training after this notification has been made ("Late Travel Cancellation Notice"), then Customer shall be responsible for the reimbursement of any change fees, cancellation fees, non-reimbursable deposits, or related expenses incurred by Company in connection with such cancellation or rescheduling, which shall also be deemed "Reimbursable Expenses." Reimbursable Expenses will be automatically withdrawn from the Customer bank account indicated in the Electronic Funds Transfer (EFT) Authorization Form attached to this Agreement, and Company will provide the Customer with an itemized expense report for incurred expenses within 30 days of (i) the completion of the on-site training or (ii) the receipt of a Late Travel Cancellation Notice, in the event that onsite training is cancelled.



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- **Hardware and POS Equipment:** Customer, at its sole cost and expense, is responsible for procuring computer hardware and POS equipment as requested by Company in connection with the implementation. Hardware cannot be returned for a refund.
- **Internet Connection.** Customer, at its sole cost and expense, must at all times provide a stable internet connection as required for the Services to function properly.

7. TITLE TO PRODUCTS AND SERVICES

All title to equipment and software licenses provided by Company for performing the Services are the property of Company or its licensors and remain the property of Company or its licensors during and after the term of this Agreement. This Agreement is a services agreement and is not intended to and will not constitute a lease or sale of real or personal property. No title, intellectual property rights or copyright in the software or in any modifications of the software shall pass to the Customer under any circumstances. The software is licensed, not sold. To the extent that Customer provides Company with any feedback relating to the Services (including, without limitation, with respect to any software related thereto, and any feedback related to usability, performance, interactivity, bug reports and test results) (“Feedback”), Company or its licensors (as appropriate) shall own all right, title and interest in and to such Feedback (and Customer hereby makes all assignments necessary to achieve such ownership).

Except as otherwise permitted in this Agreement, Customer shall not: (i) modify, translate, or create derivative works based on the Services; (ii) frame or mirror any content contained or accessible from the Services, unless expressly authorized in writing by Company; (iii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; or (iv) access or modify the Services in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Services. Furthermore, unless otherwise authorized in writing by Company, Customer agrees to access the Services only through the interface that is provided by Company for use in accessing the Services. Customer agrees not to use any automated means, including but not limited to agents, robots, scripts, spiders, and screen scraping tools, to access, monitor, download or copy all or any part of the Services, unless Company has provided prior written consent.

Customer Data is the property of Customer and remains the property of Customer during and after the term of this Agreement. “Customer Data” means non-publicly available data and information that Customer (or a user) loads, transmits to or enters into the Services, including data of Customer that the Services are configured to obtain from Customer’s servers or systems or from third parties on Customer’s behalf, but specifically excluding any Derivative Data, which Derivative Data (defined below) shall be owned by Company. Customer understands that Company may use Customer’s information, including Customer Data, for non-identifiable, aggregate reporting for all Company clients, and Customer agrees that any aggregate non-identifiable information or data compiled or collected by Company shall be “Derivative Data” under this Agreement. “Derivative Data” shall also include all modifications, compilations, derivative works and results from processing (including analyses, usage statistics and patterns, datasets, databases, reports, recommendations and visual representations) created or developed from Customer Data or on the basis of Customer’s use of the Services or in connection with data a third-party transmits to Daxko through the API Service. Customer acknowledges that Customer Data shall not include any data obtained by Company through means other than direct use of the Services by a member.

In the event that Customer is a U.S. government user, any software licensed in connection with the Services is provided with restricted rights: (a) If the Customer is a civilian agency, the software: (i) was developed at private expense and is existing computer software and no part was developed with government funds; (ii) is a trade secret of Company for all purposes of the Freedom of Information Act; (iii) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR), the government’s (and any government agency’s) use, duplication or disclosure of the software is subject to the restrictions set forth in this Agreement; (iv) is in all respects proprietary data of Company and all rights are reserved under the copyright laws of the United States; (b) If the Customer is part of the Department of Defense, the Software is commercial computer software (and commercial computer software documentation), and pursuant to DFAR



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§ 227.7202, use, duplication or disclosure of the software is subject to the restrictions set forth in this Agreement. In the event any technical data are not covered by these provisions, it shall be deemed “technical data-commercial items” pursuant to DFAR § 252.227- 7015(a). Any use, modification, reproduction, release, performing, displaying, or disclosing of such technical data shall be governed by the terms of DFAR § 252.227-7015(b).

Customer hereby acknowledges and agrees that the software constitutes valuable IP Rights of Company, including, but not limited to, copyrights and trade secrets, and that except for the rights of use, modification, and copying expressly granted to Customer herein, Company now holds and shall retain all rights, title, and interest to the software, as well as trade names or trademarks as Company may from time to time by written notice permit or require Customer to use in connection with the software (such trade names and trademarks are collectively referred to as the “Product Name”), and any documentation with respect thereto, title to all intellectual property rights, including, without limitation, copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other similar property rights (“IP Rights”) with respect thereto. Upon termination of this Agreement, Customer shall retain no rights of any nature with respect to the software or the Product Name. Customer shall not cause or allow the Product Name to be associated with any product other than the software and shall not (during the term of this Agreement or at any time thereafter) create, copy, reproduce, use, distribute, promote, sell, or sub-license any product (other than as expressly authorized herein) bearing the Product Name or any name confusingly similar thereto. Company may, at its own discretion and at its expense, take any steps necessary and proper to protect and preserve its rights and interests in the software and component parts thereof. At Company’s request and Company’s sole expense, Customer shall use reasonable efforts to assist Company in protecting such rights and interests.

Company or its licensors own and retain all of their proprietary rights in the Database and Data Access. Customer acknowledges that Company and its licensors have spent, and continue to spend, considerable time and resources on the selection and arrangement of the Data, Database and the Data Access as original intellectual creation, and accordingly, Company and its licensors own copyright in the selection and arrangement of the contents of the Database and Data Access and in the electronic materials necessary for its operation. The Database and Data Access contains copyrighted material and other proprietary information and intellectual property of Company and its licensors. The License does not transfer to Customer or any third party any rights, title or interest in or to such intellectual property, including, without limitation, any intellectual property rights in any Company or third-party content or intellectual property. Customer covenants and agrees that Customer will not, and Customer will not allow any person under Customer's control to, modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software or database used or provided by Company in connection with this Agreement, or otherwise attempt to discover any source code algorithms, trade secrets or other proprietary rights embedded in or relating to the Database or Data Access by any means whatsoever.

8. TRADEMARK AND DOMAIN NAME RIGHTS

Customer grants to Company and its affiliates a limited, non-exclusive license to use the name, trademarks, trade names, logos, slogans and copyrights related thereto of Customer in connection with providing the Services, and for promotional and marketing purposes related to this Agreement, provided that all such uses shall inure to Customer’s benefit. Customer shall be solely responsible for the selection, registration, payment, maintenance and defense of any domain name or trademark utilized by Customer. Customer agrees to indemnify and hold Company and its affiliates harmless from any claims relating to or against Customer’s domain name, trademarks or copyrights, including but not limited to any claims with respect to infringement or dilution of trademarks.

9. TREATMENT OF CONFIDENTIAL INFORMATION

From time to time one party (the “Receiving Party”) may receive from the other party (the “Disclosing Party”) proprietary



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and confidential information (“Confidential Information”), including, without limitation, the terms and conditions of this Agreement, financial information, personal information, pricing, business plans, usernames, passwords, Company Technology, and any information that is marked as “confidential” or should be reasonably understood to be confidential or proprietary to the Disclosing Party. The Receiving Party agrees that the Receiving Party will not disclose the Confidential Information to any third party, nor use the Confidential Information for any purpose not permitted under this Agreement. The Receiving Party agrees to use at least the same degree of care that it uses to protect the confidentiality of its own information, but in any event, no less than a reasonable degree of care. Except with respect to Personal Information, the nondisclosure obligations set forth in this paragraph shall not apply to information that the Receiving Party can document (i) is generally available to the public (other than through breach of this Agreement), or (ii) was already lawfully in the Receiving Party’s possession at the time of receipt of the information from the Disclosing Party, or (iii) was obtained by the Receiving Party from a third party without a breach by the third party of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information. “Company Technology,” for purposes of this Agreement, means the proprietary technology of Company, including hardware designs, algorithms, software, software tools, user interface designs, architecture, class libraries, objects, documentation, know-how, trade secrets, and any related intellectual property rights, and also including any derivatives, improvements, enhancements or extensions of any of the foregoing conceived, reduced to practice, or developed by or on behalf of Company (including, without limitation, any Feedback), whether during the term of this Agreement or otherwise.

Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a “Legal Order”), provided that the Receiving Party shall first make commercially reasonable efforts to provide the Disclosing Party with (a) prompt written notice of such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (b) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. In addition, Company may use third party service providers in providing the Company’s services. Company may share confidential information of Customer with these service providers so long as a confidentiality agreement is in place to maintain confidentiality.

As between Company and Customer: (i) Company shall own all Company Confidential Information and, except as expressly provided herein, Customer shall not have any right, title, or interest therein; and (ii) Customer shall own all Customer Confidential Information and, except as expressly provided herein, Company shall not have any right, title, or interest therein.

10. API Service (Daxko Certified Interface)

- a. **Customer Data Access Request Form.** To grant access to Customer Data to a third party through Company’s Daxko Exchange API Service, at Customer’s request, Customer must execute a Customer Data Access Request Form authorizing Company to provide such access to a third party. Company will only provide such Customer requested access to third parties participating in the Daxko Exchange API Program (each, a “Vendor”).
- b. **Privacy Notice.** Customer shall be responsible for informing its end users to whom the Customer Data relates, where required by law, about Company or Vendor’s collection, use, storage or other processing of Customer Data.
- c. **Termination of Access.** Customer acknowledges that it has the affirmative obligation to immediately inform Company if it seeks to revoke Vendor’s access to its Customer Data, including if Customer terminates its relationship with Vendor. Customer acknowledges that informing Company that it seeks to revoke Vendor’s access to Customer Data or termination of its relationship with a third party is essential to end the flow of data via the API Service between Company and Vendor with respect to the Customer Data.



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- d. **Revocation of Access.** In the event that Company reasonably believes that Vendor's access to Customer Data through the API Service is likely to cause harm or damage to the API Service, Company may immediately revoke Vendor's access. Customer acknowledges that Company may filter, alter, limit or otherwise restrict Customer's or Vendor's queries and results, and databases included, with respect to access through the API Service.
- e. **Technical Support.** Customer acknowledges that any and all technical assistance and support provided by Company relating to the API Service is beyond the scope of standard technical support under this Agreement and shall be billed at Company's then-current standard rates.
- f. **Security Breach.** Customer agrees that in the event of any breach or suspected breach in relation to (i) any Customer Data disclosed in violation of Vendor's agreement with Company with respect to the API Service or the Customer Data Access Request Form, or (ii) any actual or suspected unauthorized access, disclosure or use of Customer Data that Vendor accesses via the API Service (each event being a "Security Breach"), Vendor, and not Company, shall be responsible for containing such Security Breach, mitigating potential risks to affected individuals and notifying affected individuals and regulatory authorities of the Security Breach where required by law. Vendor shall be solely responsible for all costs or expenses associated with any remedial actions or notifications.
- g. **Release.** Customer hereby expressly releases Company and its affiliates, and their respective officers, directors, employees, consultants and agents from any claims, demands, damages, causes of action, suits or liability for any losses or damages (either to Customer or Vendor) of any kind, whatsoever, that may arise in connection with the access, use (or misuse), handling, receipt, disclosure, or storage of data by any Vendor whom Customer authorizes Company to provide access to Customer Data through the API Service.

11. WARRANTIES; DISCLAIMERS; LIMITATIONS OF LIABILITY

- a. Company warrants that:

- (i) all software and equipment utilized by Company in providing Services will, on the date installed and during the Term of this Agreement, be in good working order and will substantially conform in all material respects to Company's Service specifications;
- (ii) all work performed by Company in providing Services will be performed in a good and workmanlike manner;
- (iii) Company has good and valid title, or has otherwise licensed such rights as are necessary, with respect to all software and equipment utilized to provide Services; and
- (iv) Company has sufficient legal rights to provide Services to Customer.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, COMPANY PROVIDES, AND CUSTOMER ACCEPTS, THE SERVICES IN "AS-IS" CONDITION; AND COMPANY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (STATUTORY, EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT COMPANY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. COMPANY SHALL HAVE NO LIABILITY ARISING FROM CARD HOLDER DATA TRANSMISSION WHICH



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OCCURS PRIOR TO ENCRYPTION AND RECEIPT BY SERVERS OWNED OR CONTROLLED BY COMPANY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTIFY THEFT, OR INVASION OF PRIVACY BY ANY THIRD PARTY. COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE SERVICES OR ANY PART THEREOF. SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO CERTAIN OF THE ABOVE EXCLUSIONS MAY NOT APPLY. TO THE EXTENT THAT THIS AGREEMENT MAY BE INTERPRETED UNDER THE LAWS OF A STATE NOT ALLOWING ANY SUCH A LIMITATION ON DAMAGES, THE FOREGOING PROVISION SHALL BE INTERPRETED TO PROVIDE THE MAXIMUM BENEFIT OF THE FOREGOING PROVISION ALLOWED BY THAT STATE'S LAWS. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COMPANY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE MONTH IN WHICH THE BREACH, OUTAGE OR DEFAULT OCCURRED. ALL DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE MADE ON BEHALF OF BOTH COMPANY AND ITS AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS.

- b. In the event of any default by Company hereunder, Customer's sole and exclusive remedies shall be the adjustment, repair or replacement of the goods or services as deemed mutually appropriate by Customer and Company. Customer agrees that any claim that the foregoing warranties have been materially breached or violated must be described in sufficient detail in a written notification to Company pursuant to the notification requirement of this Agreement. Such written notification must be provided to Company within thirty (30) days of the occurrence of the breach or violation, or else such alleged breach or violation shall be deemed immaterial and waived by Customer.
- c. Certain portions of the Services provided under the Agreement may be provided by third party service providers ("Third-Party Services"). Customer acknowledges that in order to receive the Third-Party Services Customer may be required to agree to separate and additional terms and conditions with such third-party service providers ("Third-Party Agreement") and that Company is not responsible for the services or products of such third parties.

12. INDEMNIFICATION

Except as provided below, Customer agrees to defend, indemnify, and hold harmless Company and its directors, members, officers, employees, licensors and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including attorneys' fees, arising from: (i) Customer's failure to use Services as permitted under this Agreement; (ii) from any violation or breach of this Agreement by Customer; (iii) any action or inaction of Vendor to whom Customer grants access to the API Service related to Vendor's access, use, handling, receipt, disclosure or storage of Customer Data and (vi) any failure of Vendor or Customer to comply with state or federal regulations related to privacy, data protection, confidentiality or security of Personal Information; provided that Company (a) gives Customer written notice of any such claim within fifteen (15) days of Company's receipt of such claim, (b) permits Customer to have sole



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control and authority with respect to the defense or settlement of any such claim, and (c) provides Customer all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim, at Customer's cost and expense.

Except as provided below, Company agrees to defend, indemnify, and hold harmless Customer and its directors, members, officers, employees, and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of any and all third party claims that the Services infringe a valid U.S. patent or copyright or misappropriate a trade secret of a third party provided that Customer (a) gives Company written notice of any such claim within fifteen (15) days of Customer's receipt of such claim, (b) permits Company to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provides Company all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim. If the Services becomes, or in Company's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Company may, at its option and expense,

(i) procure the right to allow Customer to continue to use the Services or (ii) modify or replace the Services or infringing portions thereof to become non-infringing, without loss of material functionality. If Company is unable to provide one of the remedies in (i) or (ii) within forty-five (45) days of notice of the claim, Company shall have the right to terminate this Agreement. Notwithstanding the foregoing, Company shall have no liability or obligations with respect to any patent, copyright, or trade secret infringement claim based upon or arising out of (i) any modification or alteration to the Services not approved by Company, (ii) any combination or use of the Services with products or services not supplied by Company or approved in writing by Company in advance of such combination, (iii) any patent, copyright or trade secret in which Customer or its affiliates have an interest, or (iv) use of the Services not in accordance with its documentation or outside the scope of the license granted under this Agreement. Customer agrees to defend, indemnify, and hold harmless Company and its directors, members, officers, employees, and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of any and all third party claims enumerated in clauses (i) through (iv) above. The foregoing states the entire liability of Company with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights by the Services or any part thereof. Customer will immediately inform Company as soon as Customer becomes aware of any threatened or actual liability claim by a third party relating to the Services.

13. NOTICES

Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by either Party pursuant to the terms of this Agreement shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, (c) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), or (d) upon confirmation of receipt by email, in each case, addressed to the Party at such Party's address as set forth on the signature page of this Agreement or as subsequently modified by written notice.

14. SUNSET POLICY

The Services are subject to Company's sunset or discontinuation policy ("Sunset Policy") and Company reserves the right to discontinue all support for the Services, or for any features, services or content accessible through the Services, in accordance with such Sunset Policy. Company focuses on supporting rapidly-changing technologies, and on innovating to provide customers with the most stable and useful set of products and services possible, and consequently, products and services may go through major updates or be replaced with newer products. As new versions, products, and services are introduced, Company actively plans for sunset of older services and software versions as well as specific product features. Below is Company sunset policy ("Policy") to help customers better manage their end-of-life transition and to understand



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the role Company can play in helping to migrate to updated alternative Company technologies. This Policy explains the type of support services Company will provide for Licensed Product and services during a product's life cycle. For the purposes of this document, "Support" and "Maintenance" are used interchangeably.

a. **Definitions.**

- Sunset/Sunsetting or End of Life (EOL) refers to when Company ceases marketing or offering a particular Licensed Product or a Major Release for a particular Licensed Product. When a Licensed Product is sunsetted, it enters the sunset, or EOL, period. The Sunset or EOL Period starts when the next major version of a product is released—or at such other time when Company announces to customers that a given product has been discontinued—and ends at the time designated by Company in the EOL or Sunset announcement, which may vary.
- End of Support (EOS) begins after the expiration of the sunset period when software shall be deemed at End of Support, or as an EOS version or product.
- Licensed Product refers to the Company software product or services you license, which is governed by the applicable agreement between you and Company.
- Releases for Licensed Product are categorized as Major Releases or Maintenance Releases.
- Major Release/Version means a new release of the Licensed Product that incorporates the last Maintenance Release(s) (if any) and may include additional enhancements to the Licensed Product. Major Releases may include architectural changes and major feature changes, as well as new features and functionality. The terms "Release" and "Version" are used interchangeably in this document.
- Maintenance Release means a release of the Licensed Product that provides cumulative patches for a particular Major Release. A Maintenance Release typically does not contain new features or new functionality. Patches are software code updates that resolve specific software deficiencies. These are typically designated as a build number associated with a specific release.
- Support Services are the maintenance support services for Licensed Product. Customers must have a current agreement and be up to date on all amounts due under the agreement in order to receive Support Services (in accordance with this Policy).

b. **Full Support.** Company provides Full Support for Licensed Product for which the customer has a current agreement for the current version of any software or services with all Maintenance Releases applied. For customers with the current major version of the software who have not applied all available patches, support may be limited to configuration assistance, activation assistance, and general questions.

c. **Sunset Support.** Company provides a more limited level of Support Services for software that is in the Sunset Period. Limited support is provided for customers who have installed all patches available to the Sunset Version. Support services may not be provided if all available fixes have not been installed. If all patches have been installed, the customer shall provide Company with a fully reproducible scenario in which the error occurs. For the first nine (9) months after Sunset is initiated for a product, Company may, at its option, provide an additional patch to the Sunset Version or offer a work-around. Partial support will be subject to the availability of resources and may be limited as Company determines. At nine (9) months after Sunset, Company shall provide configuration support or work-arounds only. No defects shall be corrected in Sunsetted versions after nine (9) months. No new features or enhancements shall be added to Sunsetted versions of software.

d. **End of Support.** After Sunset or End of Life (EOL), a product shall be deemed at End of Support (EOS). EOS products and versions shall have Company Community (self-help) support only. Customers may opt to purchase pay-per-incident (PPI) support for EOS products or versions; however, this support shall be limited to configuration only



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and shall not include any fixes, patches, or enhancements to the unsupported version. PPI support entitles the customer of an EOS product or version to submit a ticket through the online HelpDesk. Fees for PPI shall be at Company's then-current applicable rates.

- e. **Contract Commitments.** Notwithstanding any of the foregoing, in the event that any Licensed Products or Versions thereof are scheduled to reach EOL or EOS without a replacement or new version of the Licensed Products being made available to the customer, such Licensed Products will be supported by Company in accordance with the applicable Order Form and Service Agreement for the remainder of the then-current term of such agreement.

15. GENERAL

- a. **Limitation of Action.** Any legal action arising out of Company's provisioning of Services, including the failure, malfunction or defect in the Services shall be brought within one (1) year of the occurrence or deemed waived.
- b. **Non-Solicitation.** Neither party to this Agreement will solicit for employment any then current employee of the other party either directly or indirectly through a third-party during the term of this Agreement, including any renewal thereof, without the mutual agreement of the parties.
- c. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, excluding the conflicts of law provisions thereof and both parties stipulate to the exclusive jurisdiction of the state and federal courts of that jurisdiction. The parties agree that any disputes among them arising from or related to this Agreement shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association in a mutually agreed upon location. The parties shall each be responsible for initial payment of one-half of any arbitration fees, but upon final resolution the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Notwithstanding the foregoing arbitration provision, Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its representatives may cause irreparable harm to Company for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Customer or its representatives, Company shall, in addition to any and all other rights and remedies that may be available at law (which Company does not waive by the exercise of any rights hereunder), be entitled to seek a temporary restraining order, injunction, specific performance and any other equitable relief that may be available from a court of competent jurisdiction, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
- d. **No Assignment.** Customer shall not assign any of its rights under this Agreement nor delegate its duties hereunder to another person or entity without the prior written consent of Company, which consent may be granted or withheld in Company's sole and absolute discretion. Any permitted assignment shall be subject to the permitted assignee or transferee agreeing in writing to comply with all the terms and restrictions contained in this Agreement. Any attempted assignment in violation of this Section shall be void. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective trustees, successors, permitted assigns and legal representatives.
- e. **Password Security.** Strong passwords must be used to access all IT services, including the Admin Website logon. Strong passwords are defined as having more than eight characters, not matching standard "dictionary"



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definitions. Customer acknowledges that Company may maintain, or use a third party who maintains, physical and technical security of the servers at a level commensurate with reasonable commercial practices for similar types of information (such as, but not limited to, lock and key, encryption, and blocking and identifying unauthorized access to data).

- f. **Severability.** In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, this Agreement will not fail, but will be deemed amended, to the least extent necessary, to delete the void or unenforceable term or provision, and the remainder of this Agreement will be enforced in accordance with its terms and will not in any way be affected or impaired thereby. In the event that any term or provision of this Agreement is held to be overboard or otherwise unreasonable, the same will not fail, but will be deemed amended only to the extent necessary to render it reasonable, and the Parties agree to be bound by the same as thus amended.
- g. **Changes.** Company reserves the right, in its sole discretion, to make any changes to the Services from time to time that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Company's services to the Customer and/or any Customer Users, (ii) the competitive strength of or market for Company's services, or (iii) the Services' cost efficiency or performance; and/or (b) to comply with applicable law. In addition, upon Customer's request, Company may (in Company's discretion) add or delete some portion of the Services, without requiring a separately signed agreement, provided that such changes do not increase or decrease the total fees under this Agreement by more than ten percent (10%). Company reserves the right to modify this Agreement to correct errors and omissions, or substitute Services with reasonably equivalent Services (provided that the change will have no effect on the total fees under the Agreement).
- h. **Rights upon Termination.** Upon the expiration or any termination of the Agreement, Customer shall promptly return to Company, or with Company's prior written consent destroy, any information from the Services in Customer's possession or control. If the Agreement is terminated prior to the expiration of the Initial Term or the applicable Renewal Term, Customer shall pay to Company within thirty (30) days after the effective date of such termination an amount equal to the total remaining annual license and maintenance fees owed in accordance with the Monthly Managed Services Fee, defined as the current monthly fee multiplied by the number of months in the Initial Term or the then current Renewal Term, as applicable, less the aggregate amount of the license and maintenance fees actually paid by Customer to Company during the Initial Term or the then current Renewal Term, as applicable plus any additional fees and costs at Company's then current rates. Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer's available data in accordance with Company's then-current data export policy following payment of any applicable fees at then current standard fees.
- i. **Force Majeure.** In no event will Company be liable or responsible to Customer, or be deemed to have defaulted under or breached the Agreement any failure or delay in fulfilling or performing any term of these Terms and Conditions, when and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, pandemic, epidemic, quarantine, embargoes or blockades in effect on or after the date of the Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law, rules, regulations or orders, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power



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or telecommunications or transportation.

- j. **No Third-Party Beneficiaries.** Except as expressly provided, the Agreement are for the sole benefit of the Parties and nothing herein expressed or implied will give or be construed to give to any person, other than the Parties, any legal or equitable rights hereunder.
- k. **Setoff.** All amounts payable to Company under the Agreement shall be paid by Customer to Company in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).
- l. **Monitoring.** Company may monitor Customer's and Customer User's use of and access to the Application or Services to ensure compliance with the Agreement and any other applicable rules, policies, deadlines and instructions. By using the Application or Service, each of Customer and Customer User expressly consents to such monitoring.
- m. **Collection and Use of Private Information.** Each of Customer and Customer User acknowledges that when such party download, install or use the Application or Service, Company may use automatic means (including, for example, cookies and web beacons) to collect information about Customer User's mobile device and about Customer User's use of the Application or Service. Customer and Customer User also may be required to provide certain information about Customer User as a condition to downloading, installing or using the Application or certain of its features or functionality. All information we collect through or in connection with this Application is subject to our Privacy Policy. By downloading, installing, using and providing information to or through this Application, Customer User's consent to all actions taken by us with respect to Customer User's information in compliance with the Privacy Policy.
- n. **No Waiver.** The rights and remedies provided by the Agreement are cumulative. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.
- o. **Exclusivity.** During the Term, Customer agrees that Company will be the exclusive provider of the Services at all present or future locations, sites, or facilities that Customer owns or controls. Customer shall not solicit bids, quotes, or contracts from another provider of the Services during the Term of this Agreement for the provision of Services to such additional locations, sites, or facilities not presently covered by this Agreement.

16. SPECIFIC MOBILE TERMS

If Customer's Order Form selected mobile services, the following additional terms also govern that product.

- a. **No Implied License; Limitations on Use.** Customer acknowledges and agrees that this Agreement in no way shall be construed to provide to Customer any express or implied license to copy, reproduce, use, sell, distribute, prepare saleable derivative works based upon or sublicense the Software or Admin Website other than as expressly set forth herein or in Customer's Order Form Customer expressly agrees not to take any of the foregoing actions or permit any of the foregoing actions to be taken by anyone who has access to the Software or Admin Website. The Software and Admin Website shall be used solely in connection with Customer's business. Customer shall not use or permit or allow the use of the Software or Admin Website or any portion thereof in any other



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manner without the written consent of Company, which consent may be withheld at Company's sole and absolute discretion, nor shall Customer decompile, translate, reproduce, reengineer, or reverse engineer the Software, Admin Website, or any part thereof, or otherwise attempt to derive the source code for any part thereof.

- b. **Corrections, Updates, and New Versions of Software.** Company may, at its option and in its sole and absolute discretion, provide Customer with New Versions, Corrections, and/or Updates of the Software or Admin Website. If Company provides Customer with Corrections, Updates, or New Versions of the Software or Admin Website, such Corrections, Updates, or New Versions shall be deemed part of the Software or Admin Website (as applicable). Customer understands that Company reserves the right to supplement, modify, update, or otherwise alter the Admin Website and its functionality, provided that any such action shall not materially or substantively change the functionality of the Admin Website nor in any way breach Company's obligations. Company shall use its best efforts to notify Customer in advance of any such action with regard to the Admin Website.
- c. **Postings to Admin Website.** Company shall in no event be responsible or liable for any content posted upon the Admin Website by Customer, including with respect to Customer or any Member ("Customer Content"). Customer shall at all times retain all right and title to Customer Content, and no right, title, or interest in any Customer Content is transferred to Company. Customer shall defend, hold Company harmless from, and indemnify Company against any and all third party claims, causes of action, damages, costs, fines, penalties, and expenses of any kind, including, without limitation, reasonable attorneys' fees, (collectively, "Losses") arising out of or relating to any Customer Content posted upon the Admin Website by Customer or any person using Customer's access to the Admin Website, provided that such Loss is the not the result of Company's modification of such Customer Content or failure to remove or uncache such Customer Content upon Customer Request.
- d. **Termination.** Upon the expiration of the mobile agreement, the license granted to Customer shall terminate, expire, and be of no further force or effect. Upon the termination or expiration of the mobile agreement, any Customer Content integrated into or posted on the Software or on the Admin Website or provided to Company in any manner shall be removed from Company servers and possession and returned to Customer or destroyed at Customer's request. Upon expiration of the mobile services agreement and request of the Customer, any and all data regarding Customer and any of Customer's members shall be provided to Customer in a reasonable format, in accordance with Company's then-current data export policy, and subject to payment by Customer of the then-current data-export fees, as well as any other fees remaining due under this Agreement.
- e. **Mobile Privacy Policy Incorporated.** Customer acknowledges that Company's Mobile Terms of Use govern all end users of the Company mobile app, which terms may be found at: <http://www.clubautomation.com/terms-of-use>.

17. Specific Terms for Database Service

If Customer's Order Form selected database services, the following additional terms also govern that product.

- a. **Limitations.** The Daxko Vault service is comprised of a database (the "Database") managed, owned or created by Company (or its licensors) which contains certain data relating to Customer or Customer's members ("Data"). The Data provided via the Database for Customer's internal purposes by accessing the Database via credentials provided by Daxko (the "Data Access"). Customer may not distribute, grant rights of access, or otherwise make the Database or the Data Access available to any third-party, except as permitted by this Agreement. Customer has



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been granted the right to access the Data and Database through the Data Access and to use, and to allow Customer's employees and Authorized Contractors to use, the Data, Database and Data Access only for Customer's Internal business purposes at Customer's business locations. ("Authorized Contractors") shall mean a (i) non-employee individual under an independent contractor relationship with Customer to perform information technology services in a role that could be held by an employee which requires access to the Data and Database via the Data Access, and who has agreed to comply with the terms and conditions of this Agreement, including, without limitation, the obligations of confidentiality; and (ii) subject to the immediately following sentence), those third party companies and their personnel that have been approved by Company pursuant to a Data Access Authorization Form. Notwithstanding the foregoing, Company reserves the right to deny access to the Database and Data Access to any third-party contractor or subcontractor who Company reasonably determines to be engaged in business activities generally competitive with Company or Company's preferred service providers. Unauthorized use is strictly prohibited. Without limiting the foregoing, Customer covenants and agrees that Customer will not lease, assign, sublicense, or otherwise transfer, distribute, publish or encumber the Database or Data Access, or any of Customer's rights with respect thereto, in whole or in part, and Customer further covenants and agrees that Customer will not under any circumstances sell access to the Database or Data Access or the results therefrom, in any form whatsoever, or use the Database or Data Access in connection with any commercial timesharing, service bureau or other similar rental or sharing arrangements involving third parties. Customer acknowledges and agrees that Customer shall be responsible for any interfacing required for access to the Data and Database via the Data Access. Customer is responsible for all use of the Data, Database and Data Access by employees and Authorized Contractors, and shall ensure their compliance with this Agreement. Any updates to the Data or Database will be as set forth on the Data Access.

- b. **Additional Limitations.** Customer's use of, or failure to use, the Data, Database or Data Access is at Customer's sole risk. COMPANY IS NOT THE ORIGINATOR OF THE DATA IN THE DATABASE; ACCORDINGLY, COMPANY MAKES NO WARRANTY ABOUT THE ACCURACY OR QUALITY OF THE DATA, DATABASE OR DATA ACCESS, AND DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT CUSTOMER'S USE OF WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS EXPLICITLY PROVIDED HEREIN, ALL DATA, THE DATABASE AND DATA ACCESS ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF NON- INFRINGEMENT, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION ARISING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE FEES RECEIVED BY COMPANY FOR THE DATA FROM CUSTOMER IN THE ONE (1) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE, WHETHER ARISING FROM ANY SOURCE, AND EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Customer acknowledges and agrees that Company is not responsible for any Data provided in the Database or Data Access. By purchasing a subscription, Customer acknowledges that Company does not warrant or endorse, nor does it assume or will it have any liability or responsibility for, any Data or for any other materials, products, or services of third parties. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO CUSTOMER UNDER ANY THEORY OF LIABILITY (REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, OR OTHERWISE) FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY CUSTOMER THROUGH CUSTOMER'S USE OF THE DATA, INCLUDING ANY



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LOSS OF DATA, WHETHER OR NOT COMPANY OR ITS REPRESENTATIVES, HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. Customer agrees to indemnify, defend, and hold Company harmless with respect to any claims arising out of or relating to Customer's unauthorized use of the Data, Database or Data Access.

Company reserves the right to immediately terminate this Agreement in the event it reasonably determines that Customer has breached the Agreement. Further, in the event that Company decides to no longer offer access to the Data or Database via the Data Access under the terms of this Agreement, Company may terminate this Agreement at any time upon thirty (30) days prior written notice. Company may suspend or terminate Customer's access to the Data, Database or Data Access if Customer is in breach of this Agreement. Company may suspend or terminate Customer's Use of the Data, Database or Data Access in the event Customer's use detrimentally impacts Company or other users who have access to the Data, Database or the Data Access, or other Company software or services, or in the event Company believes that such detrimental impact is likely to occur, as determined in Company's sole discretion. Further, Company may suspend or terminate Customer's access to the Data, Database or Data Access in the event that Customer allows third-party access to the Data or Database or Data Access without express, prior, written consent of Company. Company reserves the right to remove any Data or Database from the Data Access at any time.

18. Specific Terms for GroupEx Pro

- a. **Postings.** Company shall in no event be responsible or liable for any content posted by Customer, including with respect to Customer or any member of Customer (a "Member") (the "Customer Content"). Customer shall at all times retain all right and title to Customer Content, and no right, title, or interest in any Customer Content is transferred to Company as a result of this Agreement. Customer shall defend, hold Company harmless from, and indemnify Company against any and all third party claims, causes of action, damages, costs, fines, penalties, and expenses of any kind, including, without limitation, reasonable attorneys' fees, (collectively, "Losses") arising out of or relating to any Customer Content posted by Customer or any person using Customer's access, provided that such Loss is the not the result of Company's modification of such Customer.

19. Terms Specific to Daxko Payment Services ("DPS") / Full-Service Billing / Daxko Resubmission Services (These products may be subject to a separate, controlling agreement)

- a. **Company not a Credit Reporting Institution.** Customer acknowledges that Company is not a financial or credit reporting institution. Company is responsible only for providing data transmission to effect or direct certain payment authorizations for Customer (or its customers) and is not responsible for the results of any credit inquiry, the operation of websites or internet service providers, financial institutions, financial processors, the availability of the internet, or for any damages or costs that Customer may suffer or incur as a result of any instructions given, actions taken or omissions made by Customer or its authorized users, Customer's financial processor, financial institution, or internet service provider. Company is not a party to, and shall not be responsible for the resolution of, any dispute between Customer and a purchaser of Customer's goods or services.
- b. **Accuracy and Compliance with Law.** Customer is solely responsible for the accuracy and completeness of all data



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provided by Customer or its authorized users. Customer represents and warrants that Customer will comply with all laws and regulations applicable to Customer's use of the Services and agrees to use the Services only as permitted by applicable law, including but not limited to export control and financial services laws and regulations.

- c. **PCI DSS.** Company adheres to Payment Card Industry Data Security Standards ("PCI DSS"). Company reserves the right to temporarily suspend access to the Services in order to minimize threats to the security and to protect operational stability and security of the Services. Company does not guarantee the security of the Services and will not be responsible for any infiltration of its security systems so long as Company has used commercially reasonable efforts to prevent such infiltration. In no event will Company be liable for transaction processing or other services performed by any third party.
- d. **Suspension of Services.** Customer acknowledges and agrees that Company shall have the right to suspend the Services and terminate this Agreement upon the occurrence of any event giving rise to termination of the MPA between Customer and the third-party provider. Further, Customer agrees that Company may suspend Customer's access to the Services immediately, without advance notice, if: (i) certain third-party licenses or access to third-party components of the Services are terminated; (ii) Customer causes or fails to fix a security breach relating to the Services; (iii) Company reasonably believes Customer's breach compromises the security of the Services; (iv) Company reasonably believes fraudulent transactions are being submitted on Customer's account knowingly or negligently; (v) Customer's financial processor or financial institution requires such suspension; (vi) Customer fails to pay any fees when due; (vii) Customer fails to upgrade to the most current software version, security updates and/or patches; or (viii) Customer fails to materially comply with this Agreement or the MPA.
- e. **Limitations of Liability.** Customer agrees that the disclaimers, exclusions, and limitations of remedies, liability and damages provisions set forth in the MPA are incorporated by reference and shall apply to the Services provided by Company hereunder, the same as if those provisions were stated herein, with Company liability hereunder limited to the full extent allowed by such provisions.
- f. **First Data Approval.** Should First Data fail to approve the Customer's merchant processing application, Company may, in its sole discretion, terminate all or a portion of this Agreement upon written notice to Customer.
- g. **Early Termination or Cancellation.** In the event of termination of Daxko Payment Services ("DPS") prior to the expiration of the Term of the Agreement ("Early Termination"), Customer agrees to pay the Early Termination Fees equivalent to annual recurring revenue **calculated as of the Effective Date of Customer's most recent Order Form multiplied by the basis points listed for Customer's DPS service** in addition to exit data fees, detokenization fees, and other fees and costs, all payable at the then-existing rate. In the event of cancellation of DPS, either early or at the end of the term, Customer agrees to pay exit data fees, detokenization fees, and other fees and costs, all payable at the then-existing rate. Customers that do not launch DPS or who terminate DPS prior to the expiration to the expiration of the Agreement are subject to alternative pricing.
- h. **MPA / Statement of Fees.** In the event of a conflict between the Agreement and the MPA, the provisions of the MPA shall control.

20. Terms Specific to SMS / Text Messaging Services

Company automates text message communications, but Customer is responsible for ensuring that the recipients of those communications have provided prior express written consent to receive them. The prior express written consent must



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identify that Customer may be sending text messages related to the Services using automated technology and that the recipient affirmatively agrees to receive such messages. The prior express consent must include the recipient written or electronic acceptance. Specifically, by entering a cell phone number in connection with the Services and not opting such cell phone out of the Company text message feature, Customer is directing Company to automatically send text message reminders and other communications to such cell phone and certifying that the user of such cell phone consents to the receipt of those messages. Customer is responsible for all liability for any failure to receive consent or failure to opt users out of the text message feature. Additionally, Customer may not attempt to spoof sender domains, send spam or other offending text message practices. Company makes no expressed or implied warranty of individual message receipt. Company shall not be liable for any issues that arise associated with the content that Customer provides or unforeseen liabilities of it being delivered. Customer shall be solely liable to comply with applicable laws and regulations within Customer's jurisdiction in connection with telecommunication (e.g., email and text) messages that you send to the Customer Users.

Each of Customer and Customer User acknowledges that when such party download, install or use the Service, Company may use automatic means (including, for example, cookies and web beacons) to collect information about Customer User's mobile device and about Customer User's use of the Service. Customer and Customer User also may be required to provide certain information about Customer User as a condition to downloading, installing or using the Service or certain of its features or functionality. All information we collect through or in connection with this Service is subject to our (and our third-party service providers') Privacy Policy. By downloading, installing, using and providing information to or through this Service, Customer User's consent to all actions taken by us with respect to Customer User's information in compliance with the Privacy Policy. Company's privacy policy is available at: <https://www.daxko.com/privacy>. Company's third-party service provider's privacy policy is available at: <https://www.twilio.com/legal/privacy>.

You acknowledge that you have read Twilio's Privacy Policy and understand that it sets forth how Twilio and Company will collect, store, and use your Customer Data. "Customer Data" consists of information made available to us through your use of our Services under these terms. If you do not agree to Twilio's Privacy Policy, you must stop using the Services.

Twilio or Company may periodically delete your Customer Data. Further, data storage is not guaranteed by us and you agree that we will not have any liability whatsoever for any damage, liabilities, losses, or any other consequences that you may incur relating to the loss or deletion of Customer Data.

You further acknowledge and agree that we may access or disclose Customer Data, including the content of communications stored on our systems, if: (i) we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or government request, (ii) to enforce our agreements and policies, (iii) to protect the security or integrity of our services and products, (iv) to protect ourselves, our other customers, or the public from harm or illegal activities, or (v) to respond to an emergency. You agree that:

- a. You will not attempt to use our Services to access or allow access to Emergency Services, unless you do so consistent with, and have agreed to, the Twilio Inc. 911-Terms and Conditions.
- b. You will ensure that our Services are used in accordance with all applicable Law and third party rights, as well as these Terms and the Twilio AUP, as amended from time to time.
- c. You will ensure that we are entitled to use your Customer Data, including content of communications stored on our systems, as needed to provide our Services and will not use our Services in any manner that violates any applicable law.
- d. We reserve the right to reclaim any phone number from your account and return that number to the relevant numbering plan if you do not send sufficient traffic over that phone number such that the phone number is unutilized.



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ed or underutilized, as defined by any local, federal, and/or national regulatory agency and/or governmental organization with oversight over the relevant phone number and numbering plan. If we seek to reclaim a phone number from your account, excluding suspended and trial accounts, we will send you an email at least two (2) weeks' in advance telling you that we are reclaiming the phone number, unless we're otherwise prevented from doing so by the applicable regulatory agency or governmental organization. We also reserve the right to reclaim phone numbers from accounts suspended for failure to pay and/or suspended for suspected fraud, and to reclaim phone numbers in free trial accounts that are unutilized for more than thirty (30) days.

e. You acknowledge that Twilio is the "customer of record" for all phone numbers provided as part of our Services. As the customer of record, Twilio has certain rights with respect to porting phone numbers. You understand and agree that you may use the phone numbers provided as part of our Services subject to the terms of our agreement with Twilio. Unless otherwise required by law, Twilio reserves the right to refuse to allow you to port away any phone number in Twilio's sole discretion. Regardless, we may allow you to port away phone numbers, so long as you (1) have an upgraded account in good standing, and (2) have either ported in or purchased the phone number more than 90 days prior to the port-away date.

21. Terms Specific to Daxko Digital Marketing Services

- a. **Ownership Rights.** Customer hereby grants to Company a non-exclusive, non-terminable, royalty-free license to access, use, copy, modify, create derivative works and distribute all materials, information, data and other content provided to or otherwise made available to Company by or on behalf of Customer in connection with the Services (as defined in the separate agreement), including any materials, information, data and other content that is incorporated in or derived from the processing of such information, data or content in connection with the Services (the "Customer Materials"), along with the right to transfer or sublicense such rights to contractors and subcontractors of Company, in connection with the following activities to which Customer consents: (i) to perform the Services under this Agreement, (ii) to diagnose, monitor and optimize the performance of the Services, (iii) to compile and aggregate statistical data provided that (a) Company agrees to maintain as confidential and not disclose to any third-party any Customer Materials identifying an individual consumer (except as otherwise permitted as necessary to provide the Services), and (b) Company will use the Customer Materials solely to create analyses in aggregated or derivative form in a manner that does not permit identification of Customer, Customer employees, or individual consumers, and (iv) for any other access or use to which Customer expressly consents. Information or data obtained through Company's own systems independent of the Services shall not be included in the definition of Customer Materials. Customer represents and warrants that Customer has all rights and authority to the Customer Materials to grant the rights and approvals in this Agreement.

Customer acknowledges and agrees that Company may access, use, preserve and disclose Customer's account(s) information, including, but not limited to, any information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other information or materials (collectively "Content") posted or made available through the Service (together with any other information or data you provide to Company, collectively referred to as the "User Content") if required to do so by law or if in Company's reasonable determination, Company believes that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any User Content violates the rights of third parties; (d) respond to your requests for customer service; (e) protect the rights, property or personal safety of



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Company, its members and the public; or (f) otherwise provide you with access to and use of the Service.

By submitting User Content of any kind, Customer agree that you have the right to submit such User Content and that such User Content does not infringe or violate any privacy, property, or other rights of any party. Customer further agree that Customer will not upload any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or the Service and that Customer will be solely responsible for all User Content that Customer submits to or post within the Service, including the consequences of posting or publishing such User Content. It is strictly prohibited to upload User Content of any kind that contains expressions of hate, abuse, offensive images or conduct, obscenity, pornography, or any material that could give rise to any civil or criminal liability under applicable law or regulations or that otherwise may be in conflict with this Agreement.

Due to the global nature of the Internet, Customer agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, Customer agrees to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which Customer resides.

- b. **Limitations/ Restrictions.** Any unauthorized modification of Company's website themes ("Theme") shall be a material breach of this Agreement. Except as specified in this Agreement, Customer is prohibited from: (i) Distributing, transferring possession, integrating into other programs or software, copying, lending, renting, leasing, transmitting or otherwise making copies of or use of the Theme or the database to any third party; (ii) Modifying, adapting, or creating derivative works of the Theme or the database; (iii) Disabling any password or other protective device incorporated into the Theme; (iv) Attempting in any way to obliterate or destroy the copyright notices, trademarks, service marks of Company in or on the Theme, or any watermarks; or (v) Using the Theme or database in any way past the expiration of the Term.
- c. **Copyright.** Company has in place certain legally mandated procedures pursuant to the Digital Millennium Copyright Act ("DMCA") regarding allegations of copyright infringement occurring in the Copyright. Company reserves the right in its sole discretion to immediately suspend and/or terminate access to the Service by any user who is alleged to have infringed on the intellectual property rights of Company or of a third party, or otherwise violated any intellectual property laws or regulations. Company's policy is to investigate any allegations of copyright infringement brought to its attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want Company to delete, edit, or disable the material in question, you must provide Company with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Company to locate the material; (d) information reasonably sufficient to permit Company to contact you, such as an address, telephone number, and if available, an electronic mail address at which you may be contacted; (e) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, you must provide it to Company's agent for copyright issues relating to the Service at the following:



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600 University Park Place #500
Birmingham, AL 35209
Attn: Daxko Office of Privacy
legal@daxko.com
Or call: (847) 597-1740

If you believe that any User Content that you submitted through the Service and was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use such User Content, you may send a counter-notice containing the following information to COMPANY's agent for copyright issues: (a) your physical or electronic signature; (b) identification of the User Content that has been removed or to which access has been disabled and the location at which the User Content appeared before it was removed or disabled; (c) a statement that you have a good faith belief that the User Content was removed or disabled as a result of mistake or misidentification; and (d) your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the appropriate federal court in Birmingham, Alabama, and a statement that you will accept service of process from the person who provided notification of the alleged infringement. If a counter-notice is received by Company's agent for copyright issues, we may send a copy of the counter-notice to the original complaining party informing that person that we may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Company's sole discretion.

- d. **Search Engine Marketing.** Customers receiving SEM services will have access to a Company SEM/PPC specialist that will setup local directory listings within a third-party SEM and manage those listings. The specialist will also setup and manage paid advertising through Google Adwords Express for client campaigns, provided that any Google Adwords fees shall be paid directly by Customer through the Customer's merchant account. Customer agrees to spend a minimum of \$25.00 per month on paid advertising (such as pay per click) through Google, provided that for maximum effectiveness, Company may recommend additional paid advertising through Google based on Customer location, keyword competition, and other relevant factors. Company is not responsible for the Customer overwriting SEM work to the Customer's site (e.g., Customer/webmaster uploading over work already provided/optimized). The Customer will be charged an additional fee for re-constructing content, at then-standard hourly rates. Customer acknowledges that Company has no control over the policies of search engines with respect to the type of sites and/or content that they accept now or in the future, and that the Customer's website may be excluded from any directory or search engine at any time at the sole discretion of the search engine or directory.
- e. **Out of Scope Customizations.** Any website customizations specially requested by Customer shall be subject to a separate statement of work mutually agreed upon by the parties and shall be billed on an hourly basis at Company's then-standard rates.
- f. **Delivery of Website after Buy Out.** Upon buy out of website at then standard rates, Company will deliver applicable website files in a single zipped format. This will include the database, WordPress theme, WordPress core files, and plugins that are not exclusively owned by Company, and which are the subject of third-party licenses, which may have ongoing license terms applicable to Customer's use of the delivered materials. Client is



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responsible for installation and transfer of website to new host. Theme and Plugin licenses that were purchased by Company are not included and will not be provided to the client. Following buy out of a website and delivery of the applicable website files, Company shall have no further obligations (including, without limitation, hosting, service or support obligations) under this Agreement with respect to such website.

- g. **Expanded License upon Buy Out.** Upon buy out of a website, and subject to COMPANY's receipt of full payment for such buy out, COMPANY grants you a perpetual, fully-paid up license to use, modify, create derivative works of, distribute, and publicly display the applicable website solely for your internal business purposes of marketing and providing information via the website regarding Customer's business, subject to the terms and restrictions of any third-party licenses applicable to third-party material which may be included in the website delivered.
- h. **Website Administration.** Administrative rights to the website shall be granted to the person designated by the COMPANY customer (e.g., the business entity entering into this Agreement). Such rights can be delegated to or revoked from another administrator at the request of the business owner or at the time of set-up of the website. In the case of any conflict related to administrative rights, the business owner shall have all authority to add or remove administrative rights to any user. In the case where the business is owned in equal parts by two or more owners, authority shall be assigned to the managing director or other assigned decision maker according to the then current corporate papers. If the decision-making authority is not clear in COMPANY's discretion, changes will only be made with Company's written authorization from a majority of participating business owners or other method in writing as established in the corporate papers. COMPANY may, at COMPANY's sole discretion, request documentation establishing to COMPANY's satisfaction the website owner prior to transferring administrative rights. You agree that COMPANY shall have no liability to you, and you hereby release COMPANY from, any liability related to the transfer of administrative rights in accordance with this section.
- i. **Overburdening Resources.** You may not overburden the Service. You may not place excessive burdens on COMPANY's, or the providers of Third-Party Services', CPUs, servers or other resources or interfere with the services we provide to other customers.
- j. **Prohibited Activities.** CUSTOMER AGREES NOT TO POST OR TRANSMIT ANY UNLAWFUL, HARMFUL, THREATENING, ABUSIVE, HARASSING, DEFAMATORY, VULGAR, OBSCENE, PROFANE, HATEFUL, FRAUDULENT, LIBELOUS, PORNOGRAPHIC, RACIALLY, ETHNICALLY OR OTHERWISE OBJECTIONABLE MATERIAL OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY MATERIAL WHICH ENCOURAGES CONDUCT THAT WOULD CONSTITUTE A CRIMINAL OFFENSE, VIOLATE THE RIGHTS OF OTHERS, OR OTHERWISE VIOLATE ANY APPLICABLE LOCAL, STATE, NATIONAL OR INTERNATIONAL LAW ("PROHIBITED MATERIAL"). Company reserves the right to terminate access to the Customer's Programming, if Company, in its sole discretion, determines that such Programming is in violation of this Agreement, unlawful or inappropriate as described above. Notwithstanding the above, Company has no obligation to monitor any material posted through the Platform or Marketplace. Any liability for any such inappropriate or unlawful material posted by Company shall be Company's.
- k. **Representations and Warranties of Customer.** Customer hereby represents and warrants that: (a) the Programming does not infringe on the intellectual property rights of any third party; (b) that the execution and performance of this Agreement does not and will not violate or interfere with any other agreement to which it is a party; (c) it has all right, power, and authority to enter into and perform this Agreement; (d) it will not enter into any Agreement that will interfere with its obligations hereunder or its performance of any of the terms and provisions hereof; (e) Customer



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has and will continue to have terms of use that contain provisions explaining the inherent danger of the activities performed in the Programming, limiting Customer's and Company's liability for bodily harm, death, or property damage, and other such terms customary relating to the types of activities in the Programming; (f) Customer has the required skill, experience, and qualifications to offer the activities appearing in the Programming; (g) Customer is the owner of all copyright and other Intellectual Property Rights (as defined below) in the Programming necessary to grant the rights granted in this Agreement.

- I. **Programming is Owned by Customer; License.** Customer is the owner of all title, right, and interest to all Programming of all manner created or produced or otherwise delivered to Company in connection with this Agreement, including, without limitation all Intellectual Property Rights therein. Customer hereby grants to the Company an exclusive, royalty free license to the Programming and all Intellectual Property Rights therein for the Term of this Agreement for use in connection with the operation of the Platform, including, without limitation, the rights to reproduce, perform, display, transmit, publish, and upon further written consent of the Customer, to also promote, sell and distribute, via the Platform the Programming for access and use by Customers. All Intellectual Property Rights in the Platform, and all improvements and/or developments thereof, shall remain the sole property of the Company.

22. Privacy Policy Incorporated

Customer acknowledges that Company's Privacy Policy is an integral part of this Agreement and agrees to abide by the terms and spirit of the Privacy Policy, which may be found at <https://www.daxko.com/privacy>.

23. ENTIRE AGREEMENT

This Agreement and all order forms, schedules, attachments, and terms and conditions, including, without limitation, the Order Form, the Customer Data Access Request Form (as applicable) and all other terms and conditions, which are incorporated by reference herein, or in an applicable Order Form, collectively represent the complete agreement and understanding between Company and Customer with respect to the subject matter herein and supersede any other written or oral agreement.