

# Daxko API Terms and Conditions

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Last Update: November 7, 2017

The services provided to you ("you" or "Customer") are subject to your agreement to the applicable Order Form(s), Service Agreement(s), and these Daxko API Terms and Conditions (the "Rules"), all entered into between DAXKO, LLC ("DAXKO") 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 you and DAXKO.

YOU ACCEPT THESE TERMS AND CONDITIONS BY (1) SIGNING THE ORDER FORM OR SERVICE AGREEMENT BETWEEN YOU AND DAXKO 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. INTRODUCTION; RULES OF THE ROAD

Daxko wants to empower our ecosystem partners to build valuable services for our customers around the information flowing through Daxko products. At the same time, Daxko aims to strike a balance between encouraging interesting development and protecting both Daxko's and our customers' rights.

These terms and conditions ("**Rules**") describe the policies and philosophy around what type of innovation is permitted with the content and information in Daxko products.

The Rules will evolve along with our ecosystem as developers continue to innovate and find new, creative ways to use the Daxko API, so please check back periodically to see the current version. Don't do anything prohibited by the Rules and talk to us if you think Daxko should give you an exception.

Applications that attempt to replicate Daxko's core user experience will need our permission and are subject to additional terms.

## 2. DAXKO CONTENT

**2.1.** All use of the Daxko API and content, documentation, code, and related materials made available to you on or through Daxko ("**Daxko Content**") is subject to and must comply with these Rules. As a reminder, your use of Daxko products



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is subject to the respective order forms, service agreements and other applicable terms and conditions for those products.

**2.2.** You may use the Daxko API and Daxko Content in connection with the products or services you provide (your "**Service**") to search, display, analyze, retrieve, view, and submit information to or on Daxko products. You may use the Daxko name or logos and other brand elements that Daxko makes available in order to identify the source of Daxko Content ("**Daxko Marks**") subject to these Rules. The foregoing license is limited, non-exclusive, non-transferrable and limited to the term of this Agreement, and all access and use shall be solely for your internal business purposes.

**2.3.** You may not distribute, grant rights of access, or otherwise make the Daxko API or Daxko Content available to any third party, except as permitted by this Agreement or with the prior written permission of DAXKO. Your use of the Daxko API and Daxko Content shall be limited to your employees and Authorized Contractors. "**Authorized Contractors**" shall mean a (i) non-employee individual under an independent contractor relationship with You to perform information technology services in a role that could be held by an employee which requires access to the API or the Daxko Content, 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, in DAXKO's discretion, by DAXKO pursuant to an API Access Authorization Form (to be provided by Daxko). Notwithstanding the foregoing, DAXKO reserves the right to deny access to the API and Daxko Content to any third party contractor or subcontractor who DAXKO reasonably determines to be engaged in business activities generally competitive with DAXKO or DAXKO's preferred service providers. Unauthorized use is strictly prohibited. Without limiting the foregoing, you covenant and agree that you will not lease, assign, sublicense, or otherwise transfer, distribute, publish or encumber the Daxko API or Daxko Content, or any of your rights with respect thereto, in whole or in part, and you further covenant and agree that you will not under any circumstances sell access to the Daxko API or Daxko Content, or the results therefrom, in any form whatsoever, or use the Daxko API or Daxko Content in connection with any commercial timesharing, service bureau or other similar rental or sharing arrangements involving third parties. You are responsible for all use of the Daxko API and Daxko Content by employees and Authorized Contractors, and any others allowed access thereto, and you shall ensure their compliance with this Agreement.

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## 3. LIMITATIONS.

**3.1.** Your use of the Daxko API and Daxko Content are subject to certain limitations on access, calls, and use as set forth in the Rules or as otherwise provided to you by Daxko. If Daxko believes that you have attempted to exceed or circumvent these limitations, your ability to use the Daxko API and Daxko Content may be temporarily or permanently blocked. Daxko may monitor your use of the Daxko API to improve the Daxko service and to ensure your compliance with these Rules.

## 4. PROHIBITED ACTIVITIES.

**4.1.** You will not, and will not attempt to, or encourage or assist any others to:

- A. sell, rent, lease, sublicense, redistribute, or syndicate access to the Daxko API or Daxko Content to any third party without prior written approval from Daxko.
- B. export Daxko Content to a datastore as a service or other cloud based service.
- C. remove or alter any proprietary notices or marks on the Daxko API or Daxko Content.
- D. use or access the Daxko API for purposes of monitoring the availability, performance, or functionality of any of Daxko's products and services or for any other benchmarking or competitive purposes.
- E. use Daxko Marks in a manner that creates a sense of endorsement, sponsorship, or false association with Daxko. You may not use Daxko Marks as part of the name of your company or Service, or in any product, service, name field or logos created by you. All use of Daxko Marks, and all goodwill arising out of such use, will inure to Daxko's benefit.
- F. replicate Daxko's core user experience, including functionality found in its products and services.

## 5. GUIDING PRINCIPLES

**5.1.** You agree that you and your Service will follow these four principles:

### **i. Don't surprise users**

- A. Get users' permission before:
  - o sending communication on their behalf. A user authenticating through your application does not constitute consent to send a message.

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- republishing Daxko Content accessed through means other than via the Daxko API or other tools that may be provided to you by Daxko.
- B. Your Service should not:
  - use business names and/or logos in a manner that can mislead, confuse, or deceive users.
  - confuse or mislead users about the source or purpose of your application.
  - use as its Application Website URL: an unrelated URL, a site intended to entice or encourage users to violate the Daxko Rules, a spam or malware site, or a shortened URL to mask the true destination.
  - replicate, frame, or mirror the Daxko website, Daxko's products, or Daxko's designs.
  - impersonate or facilitate impersonation of others in a manner that can mislead, confuse, or deceive users.
- C. Respect the privacy of Daxko Content. Do not share, or encourage or facilitate the sharing of protected Daxko Content. Promptly change your treatment of Daxko Content (for example, deletions and modifications) as changes are reported through the Daxko API.

## ii. Don't create or distribute spam

- A. Don't create or distribute spam. Spam can take many forms such as mass invitations, phishing, or unsolicited communication.
- B. If your application performs automatic actions (including content updates), make sure you do so intelligently. Ultimately, you are responsible for the actions of your account, which means you shouldn't give control of your account to a third-party unless you've thoroughly investigated the application.
- C. Do not facilitate or encourage the publishing of:
  - links to malicious content
  - pornographic or obscene images

## iii. Respect user privacy

- A. Your Service must display and comply with a privacy policy that clearly discloses what you are doing with information you collect from users. If your Service supports cookies, your privacy policy must disclose that third parties may be placing and reading cookies on the systems of your users in the course of providing content to them. Your privacy policy should also provide information about user options for cookie management and the Do Not Track setting in supporting web browsers.

- B. You should not solicit another developer's keys especially if they will be stored or used for actions outside of that developer's control. Keys and secrets that are compromised will be reset by Daxko.
- C. Do not facilitate or encourage the publishing of private or confidential information.
- D. Do not store Daxko passwords.
- E. Do not store non-public Daxko Content except at the explicit direction of a Daxko customer.
- F. You covenant and agree that you will not use the API or Daxko Content for any abusive or illegal purposes. You also covenant and agree that you will not violate the laws of any jurisdiction that are applicable to you or your business (including, without limitation, copyright, health information, privacy, and information protection laws).

#### iv. Be a good partner to Daxko

- A. Respect the features and functionality embedded with or included in Daxko Content or the Daxko API. Do not attempt to interfere with, intercept, disrupt, filter, or disable any features of the Daxko API or Daxko service.
- B. If your application causes or induces users to violate the Daxko Rules (for example, by sending out spam, etc.), it may be suspended or terminated.
- C. Respect the intellectual property rights of Daxko and others.
- D. Daxko may suspend or revoke access if Daxko believes you are in violation of the Rules or the spirit of these principles. If you are suspended, do not apply for or register additional API tokens.
- E. Except as expressly permitted by these Rules, you are prohibited from including or reproducing or copying any Daxko products or services, including, without limitation, any functionality, or functional equivalents thereof, or look and feel of the Daxko products and services in your Service, and you agree not to offer any product or service which imitates or replicates any Daxko product or service, unless authorized in a separate written agreement with Daxko.

## 6. FEES

**6.1 Fees.** You are responsible for the timely payment of all fees associated with the Daxko API or Daxko Content. DAXKO may increase fees at any time with such increase being effective ninety (90) days after providing written notice of the fee increase (subject to Section 8.1). All fees are non-refundable.

**6.2 Suspension.** DAXKO may suspend your access to the Daxko API and the Daxko Content, or the provision of updates to you, and may also elect to terminate your

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access and use of the Daxko API and Daxko Content under these Rules in event of your non-payment.

**6.3 Taxes.** All amounts due to DAXKO hereunder are net of all taxes (including withholding taxes), assessments, charges.

## 7. RESTRICTIONS ON COMMERCIAL USE

**7.1. Using Daxko Content.** Get the users' permission before:

- a. using their content on a commercial durable good or product;
- b. creating an advertisement that implies the sponsorship or endorsement on behalf of the user; or
- c. using content in a manner that would require the user's permission under applicable law, including without limitation uses of Daxko Content that features the name, likeness, or identifying persona of a person.

**7.2. Daxko Functionality.** DAXKO or its licensors own and retain all of their proprietary rights in their products and services, including the API and Daxko Content. You will not, and will not attempt to, or encourage or assist any others to copy, imitate, replicate or otherwise create or commercially offer any product or service which imitates or replicates the core user experience, including functionality, or the look and feel, found in Daxko's products and services.

**7.3. Daxko Intellectual Property.** Without limiting the generality of the foregoing, you acknowledge that DAXKO and its licensors have spent, and continue to spend, considerable time and resources on creation of their products and services as original intellectual creation, and accordingly, DAXKO and its licensors own intellectual property rights, including, without limitation copyright in their products and services, including the API and Daxko Content, and in the electronic materials therefor. The API and Daxko Content contain copyrighted material and other proprietary information and intellectual property of DAXKO and its licensors. This Agreement does not transfer to you or any third party any rights, title or interest in or to such intellectual property, including, without limitation, any intellectual property rights in any DAXKO or third-party content or intellectual property. You covenant and agree that you will not, and you will not allow any person under your control to, modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software, product, service or database used or provided by DAXKO in connection with this Agreement, including without limitation the API or Daxko Content, or otherwise attempt to discover any source code, algorithms, trade secrets or other proprietary rights embedded in or relating thereto by any means whatsoever.



## 8. OTHER LEGAL TERMS

**8.1. Term; Termination.** These Rules shall remain in effect from the date that you first access the Daxko API or Daxko Content until such time as the Agreement is terminated as set forth herein, or in accordance with the applicable Order Form or Service Agreement. Daxko may notify you at any time that these Rules and your access to the API or Daxko Content will not be renewed for a subsequent period. Daxko may immediately suspend or terminate your access to the Daxko API or any Daxko Content at any time, and without notice to you if you breach any term or condition in the Rules or otherwise engage in activities that Daxko reasonably determines are likely to cause liability or competitive harm to Daxko, or in the event your use detrimentally impacts Daxko or other users who have access to the Daxko API or Daxko Content, or in the event Daxko believes such detrimental impact is likely to occur, as determined in Daxko's sole discretion. Daxko reserves the right to remove any content from the Daxko Content at any time. Daxko may terminate this Agreement in the event of termination of any Order Form or Service Agreement. Daxko may also terminate any licenses hereunder for any reason (including by email to the address associated with your account). Daxko will not be liable for any costs, expenses, or damages as a result of termination. Upon termination, you will promptly cease accessing and using the Daxko API and Daxko Content and will delete all Daxko Content and any information derived therefrom and all copies and portions thereof, in all forms and types of media from your Service. You may terminate these Rules and your access and use of the Daxko API and Daxko Content by providing written notice of your intent to terminate to Daxko within sixty (60) days after receiving a notification of a price increase by Daxko for the API and Daxko Content service, with such termination being effective sixty (60) days after Daxko's receipt of such notice of termination. Sections 1, 2.3, 4.1, 5, 6, 7.2, 7.3, 8, 9.2, 10, 11 and 12 of these Rules will survive termination.

## 8.2. Confidentiality

You acknowledge that the information provided to you by DAXKO under this Agreement, including, without limitation, relating to the Daxko API, Daxko Content, connection strings, usernames, license keys, and passwords, as well as certain non-public information of Daxko's customers, are "**Confidential Information**" of DAXKO or its licensors. You will protect the Confidential Information with the same level of security measures that you use to protect your own confidential information, but no less than reasonable measures. By way of example, this includes measures like keeping your password private. DAXKO cannot and will not be liable for any loss or damage from your failure to comply with this security obligation. You will be solely responsible and liable for any

activity that occurs with your account. Providing any third party, except for Authorized Contractors, with access to the Confidential Information is strictly prohibited. You may use Confidential Information only as necessary in exercising your rights granted in these Rules. You may not disclose any of Daxko's Confidential Information to any third party without Daxko's prior written consent. You may not disclose any of Daxko's customers' Confidential Information to any third party without the prior written consent of Daxko's customer. You agree that you will protect this Confidential Information from unauthorized use, access, or disclosure in the same manner that you would use to protect your own confidential and proprietary information of a similar nature and in any event with no less than a reasonable degree of care.

### **8.3. Ownership; Feedback**

A. *Daxko.* You expressly acknowledge that Daxko and its customers retain all worldwide right, title and interest in and to the Daxko Content, including all intellectual property rights therein. You also acknowledge that as between you and Daxko, Daxko owns all right, title and interest in and to the Daxko API, Daxko Marks, and the Daxko service (and any derivative works or enhancements thereof), including but not limited to all intellectual property rights therein. You agree not to do anything inconsistent with such ownership. Any rights not expressly granted herein are withheld. You agree that you will not challenge Daxko's ownership of, the validity of any license to use, or otherwise copy or exploit the Daxko Marks during or after the termination of this Agreement except as specifically authorized herein. If you acquire any rights in the Daxko Marks or any confusingly similar marks, by operation of law or otherwise, you will, at no expense to Daxko, immediately assign such rights to Daxko.

B. *You.* As between you and Daxko, you retain all worldwide right, title and interest in and to your Service, excluding the Daxko API, Daxko Marks, and the Daxko Service (and any derivative works or enhancements thereof), including but not limited to all intellectual property rights therein. You may provide Daxko with comments concerning the Daxko Content or Daxko API or your evaluation and use thereof. You agree that Daxko and its designees will be free to copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense, incorporate, and otherwise use the feedback, including derivative works thereto, for any and all commercial and non-commercial purposes with no obligation of any kind to you.

### **8.4. Updates**



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Daxko may update or modify the Daxko API, Rules, and other terms and conditions, from time to time at its sole discretion by posting the changes on this site or by otherwise notifying you (such notice may be via email). You acknowledge that these updates and modifications may adversely affect how your Service accesses or communicates with the Daxko API. If any change is unacceptable to you, your only recourse is to terminate these Rules by ceasing all use of the Daxko API and Daxko Content. Your continued access or use of the Daxko API or any Daxko Content will constitute binding acceptance of the change.

## 9. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

9.1 *Representations and Warranties.* You represent and warrant that:

- A. you have the necessary power and authority to enter into this Agreement, and that the performance of your obligations will not constitute a breach or otherwise violate any other agreement or the rights of any third party arising therefrom;
- B. you will maintain throughout the term of this Agreement all rights and licenses that are required with respect to your Service; and
- C. your Service and its use, distribution, sale and license, including the use of any license hereunder, does and will continue to comply with all applicable foreign, federal, state, and local laws, rules, and regulations.

9.2 *Disclaimer.* THE DAXKO CONTENT, DAXKO API, AND ANY OTHER DAXKO PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND ON AN "AS-AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND. YOUR USE OF, OR FAILURE TO USE, THE DAXKO API AND DAXKO CONTENT IS AT YOUR SOLE RISK. DAXKO DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. DAXKO DOES NOT WARRANT THAT THE DAXKO CONTENT AND DAXKO API AND ANY OTHER DAXKO PRODUCTS AND SERVICES PROVIDED HEREUNDER WILL MEET ALL OF YOUR REQUIREMENTS OR THAT USE OF SUCH DAXKO CONTENT AND DAXKO API BE ERROR-FREE, UNINTERRUPTED, VIRUS-FREE, OR SECURE.

## 10. LIMITATION OF LIABILITY

IN NO EVENT WILL DAXKO BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS

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AGREEMENT OR YOUR USE OF THE DAXKO API, DAXKO CONTENT, OR OTHER DAXKO PRODUCTS AND SERVICES WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. IN ANY CASE, DAXKO'S TOTAL CUMULATIVE AGGREGATE LIABILITY UNDER THESE RULES WILL NOT EXCEED THE TOTAL AGGREGATE FEES YOU PAID FOR ACCESS TO THE DAXKO API AND DAXKO CONTENT IN THE ONE (1) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. The disclaimers, exclusions and limitations of liability set forth herein form an essential basis of the bargain between you and DAXKO, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of these Rules, including the economic terms, would be substantially different.

## 11. INDEMNIFICATION

You will indemnify, defend, and hold Daxko, its subsidiaries, affiliates, officers, and employees, harmless from any and all claims, damages, losses, liabilities, actions, judgments, costs, and expenses (including reasonable attorneys' fees) brought by a third party arising out of or in connection with: (a) any act or omission by you, in connection with your use of the Daxko Content, the Daxko API, or the Daxko Marks; (b) your use of the Daxko Content, the Daxko API, or the Daxko Marks other than as expressly allowed by this Agreement; (c) your breach or alleged breach of any of the terms, restrictions, obligations or representations under this Agreement; or (d) your Service. You will assume control of the defense and settlement of any claim subject to indemnification by you. Daxko may, however, at any time elect to take over control of the defense and settlement of any such claim. In any event, you will not settle any such claim without Daxko's prior written consent.

## 12. MISCELLANEOUS

These Rules, together with all applicable order forms, service agreements and other terms and conditions between the parties, constitute the entire agreement among the parties with respect to the subject matter and supersedes and merges all prior proposals, understandings and contemporaneous communications. Any modification to the Rules by you must be in a writing signed by both you and Daxko. You may not assign any of the rights or obligations granted hereunder, voluntarily or by operation of law (including without limitation in connection with a merger, acquisition, or sale of assets) except with the express written consent of



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Daxko, and any attempted assignment in violation of this paragraph is void. 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. 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, you acknowledge that a breach or threatened breach of this Agreement by you or your representatives may cause irreparable harm to DAXKO 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 you or your representatives, DAXKO shall, in addition to any and all other rights and remedies that may be available at law (which DAXKO 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. No waiver by Daxko of any covenant or right under this Agreement will be effective unless memorialized in a writing duly authorized by Daxko. If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.