

Daxko Engage Email Terms of Use

Change to Email Service Terms of Use

On September 20, 2016, Daxko will change the service provider used to send emails out of Daxko Engage from Mandrill to SendGrid. Please review the new terms of use for this email provider.

TERMS OF USE

These Terms of Use (this "**Agreement**") apply to your ("**Customer**" or "**You**") use of certain third party services that you may have access to in connection with the DAXKO Engage services provided by DAXKO, LLC ("**DAXKO**"). EACH TIME YOU USE THE SERVICES, YOU ARE ACCEPTING THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DAXKO AND THE THIRD PARTY PROVIDERS ARE UNWILLING TO GRANT YOU THE RIGHT TO USE THE SERVICES, AND YOU MUST CEASE USE OF THE SERVICES IMMEDIATELY. YOU ACCEPT THESE TERMS OF USE BY EITHER (1) CLICKING TO AGREE OR ACCEPT WHERE THESE OPTIONS ARE PRESENTED TO YOU, OR (2) ACTUALLY USING THE SERVICES. IF YOU ARE ACCEPTING ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY, YOU REPRESENT AND WARRANT THAT: (I) YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER OR SUCH ENTITY TO THESE TERMS OF USE; (II) YOU HAVE READ AND UNDERSTAND THESE TERMS OF USE; AND (III) YOU AGREE, ON BEHALF OF THE PARTY THAT YOU REPRESENT, TO THE TERMS OF USE. IF YOU DON'T HAVE THE LEGAL AUTHORITY TO BIND, PLEASE DO NOT CLICK "I ACCEPT" OR USE 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 ACCEPTANCE PROCESS.

Third-Party Services. The services provided to Customer under this Agreement include certain services developed, provided or maintained by third-party service providers of DAXKO ("**Third Party Providers**"). Access to or use of any those services ("**Third Party Services**") by Customer is subject to any separate agreement that Customer may enter into (or may have entered into) relating to those Third Party Services (each, a "**Third Party Service Agreement**"). The terms of any Third Party Service Agreement will apply to the applicable Third Party Services provided under that Third Party Service Agreement in addition to the terms of this Agreement. Except as set forth in this Agreement, the terms of any Third Party Service Agreement will control in the event of a conflict between the terms of this Agreement and that Third Party Service Agreement. All other Third Party Services will be subject to the terms of this Agreement. Each Third Party Provider retains all right, title and interest in and to all Third Party Services and all software, hardware or other technology used to provide those services, and any

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additions, improvements, updates, and modifications thereto. Each Third Party Provider will be a beneficiary of the terms of this Agreement as to the Third Party Services provided by the Third Party Provider and will have all rights necessary to enforce this Agreement against Customer in the case of any breach of those terms.

Representations, Warranties and Covenants. Customer represents, warrants, and covenants that: (a) Customer has the legal right and authority to enter into this Agreement; (b) Customer has the legal right and authority to perform its obligations under this Agreement and to grant the rights and licenses described in this Agreement and in any applicable additional agreement Customer enter into in connection with any of the services provided under this Agreement; (c) all Content (as defined below) is in compliance with the terms of this Agreement; (d) Customer will access and use the services provided under this Agreement in compliance with the terms of this Agreement and all laws, rules and regulations applicable to its obligations under this Agreement; (e) Customer will not export or re-export the Service except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable; (f) Customer will not remove or export from the United States or allow the export or re-export of the Service (i) into (or to a national or resident of) any embargoed or terrorist-supporting country, (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (iv) otherwise in violation of any export or import laws; and (g) Customer is not located in, under the control of, or a national or resident of any prohibited country or on any prohibited party list referred to in subsection (f) immediately above.

Disclaimer. THE SOLE WARRANTIES REGARDING THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE THOSE EXPRESS WARRANTIES (IF ANY) PROVIDED TO CUSTOMER BY DAXKO UNDER THIS AGREEMENT. ALL THIRD PARTY SERVICES ARE PROVIDED BY EACH THIRD PARTY PROVIDER STRICTLY "AS IS" AND "AS AVAILABLE" and ALL THIRD PARTY PROVIDERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO ALL THIRD PARTY SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE OR NON-INFRINGEMENT. THE SERVICES ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR HIGH RISK ACTIVITIES (AS DEFINED BELOW). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DAXKO OR

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ANY THIRD PARTY PROVIDER WILL CREATE ANY WARRANTIES BY OR ON BEHALF OF THIRD PARTY PROVIDER.

Indemnification. Customer agrees to and hereby does indemnify, defend, and hold harmless DAXKO, its Third Party Providers and their respective affiliates, employees, agents, contractors, assigns, licensees, and successors in interest (“Indemnified Parties”) from any and all claims, losses, liabilities, damages, fees, expenses, and costs (including attorneys’ fees, court costs, damage awards, and settlement amounts) that result from or relate to any claim or allegation against any Indemnified Party arising from Customer accessing or using the services provided under this Agreement (including any Third Party Services) or from any email or other communication generated or sent through such services or any content contained therein, whether or not in breach of this Agreement.

Limitation on Liability. NO THIRD PARTY PROVIDER WILL HAVE ANY LIABILITY UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY SERVICES PROVIDED UNDER THIS AGREEMENT (INCLUDING THIRD PARTY SERVICES), INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR OTHER FORM DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, OPPORTUNITY, REVENUES OR PROFITS, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. IN JURISDICTIONS WHERE THE FOREGOING LIMITATION OF LIABILITY IS NOT PERMITTED, THE LIABILITY OF ANY THIRD PARTY PROVIDER WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. NEITHER DAXKO NOR ANY THIRD PARTY PROVIDER WILL BE LIABLE, AND WILL HAVE NO OBLIGATION TO INDEMNIFY YOU, FOR (A) SENSITIVE DATA (AS DEFINED BELOW) SENT TO DAXKO OR SUCH THIRD PARTY PROVIDER; (B) VIOLATION OF ANY LAW BY DAXKO OR SUCH THIRD PARTY PROVIDER WHEN ACTING AT CUSTOMER’S DIRECTION; OR (C) THE SENDING BY DAXKO OR SUCH THIRD PARTY PROVIDER OF CUSTOMER’S EMAILS, INCLUDING ANY CLAIMS AGAINST DAXKO OR SUCH THIRD PARTY PROVIDER DUE TO CUSTOMER’S SENDING OR DATA COLLECTION PRACTICES OR CONTENT (AS DEFINED BELOW).

Data Privacy. DAXKO and its Third Party Providers will have the right to collect, extract, compile, synthesize, and analyze non-personally identifiable data or information (data or information that does not identify an entity or natural person as the source thereof) resulting from or relating to the use or operation of the services under this Agreement (“**Service Data**”). Any Service Data collected by DAXKO or any Third Party Provider will be owned by the party collecting the



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Service Data and may be used by that party for any lawful business purpose without a duty of accounting to Customer subject to the then current privacy policy applicable to the services under this Agreement. Customer consents to the use and disclosure of personally identifiable and other data and information as described in this Agreement and in the then-current privacy policy applicable to the services provided under this Agreement ("**Privacy Policy**").

Content. Customer will be responsible for all data, information and other content ("**Content**") provided by Customer in connection with the services provided under this Agreement. Customer will not provide and will not permit any third party to provide or to use the services provided under this Agreement to provide, any Content that: (a) infringes, misappropriates or violates any intellectual property or other rights of any third-party; (b) is defamatory, harmful to minors, obscene or child pornographic; (c) contains any viruses or programming routines intended to damage the services or any software, hardware or other technology used to provide the services or surreptitiously intercept or expropriate any data or information; (d) is false, misleading or inaccurate; or (e) constitutes Sensitive Data. For the purposes of this Agreement, "**Sensitive Data**" means (i) social security number, passport number, driver's license number, or similar identifier (or any portion thereof), (ii) credit or debit card number, (iii) employment, financial or health information, (iv) ethnic or religious affiliation or sexual orientation, (v) account passwords, (vi) date of birth, (vii) criminal history, (viii) mother's maiden name or (ix) or any other information or combinations of information that is deemed sensitive under the legal framework of any applicable jurisdiction. Customer will not use the Service for any high risk activities including, but not limited to, the operation of nuclear facilities, air traffic control, life support systems, emergency services or where the use or failure of the Service could lead to death, personal injury or environmental damage (collectively, "High Risk Activities"). DAXKO and its Third Party Providers do not intend uses of the Third Party Services to create obligations under The Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Gramm-Leach-Bliley Act ("**GLBA**") or similar laws and makes no representations that such Third Party Services satisfy the requirements of such laws. If Customer is (or becomes) a Covered Entity or Business Associate (as defined in HIPAA) or a Financial Institution (as defined in GLBA), Customer agrees not to use the Third Party Services for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) or Nonpublic Personal Information (as defined in GLBA). Customer acknowledges that email is an insecure medium that is generally not encrypted in transit, and security of information transmitted through the Internet can never be guaranteed. DAXKO and its Third Party Providers will not be responsible or liable for any deletion, correction, destruction, damage, loss or failure to store or back-up any

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Content. DAXKO and its Third Party Providers may take remedial action if any Content violates this Section, however DAXKO and its Third Party Providers are under no obligation to review any Content for accuracy or potential liability.

License Grant. Customer grants to DAXKO and its Third Party Providers all necessary rights and licenses in and to all Content necessary for DAXKO and its Third Party Providers to provide the services under this Agreement. Customer will maintain an adequate back-up of all Content and DAXKO and its Third Party Providers will not be responsible or liable for any deletion, correction, destruction, damage, loss or failure to store or back-up any of any Content. Customer represents and warrants that Customer has all necessary right, title, interest and consent necessary to allow DAXKO and its Third Party Providers to use all Content as set forth in this Agreement and as otherwise necessary to provide the services under this Agreement.