



# Daxko Operations Service Agreement

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The services provided to the Customer (“you” or “Customer”) identified in the Order Form are subject to your agreement to the Order Form, and the terms and conditions of this Service Agreement(s) 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 the Customer and DAXKO.

YOU ACCEPT THESE TERMS AND CONDITIONS BY (1) SIGNING THE ORDER FORM 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. DESCRIPTION OF SERVICES

Pursuant to the terms and conditions of this Agreement, DAXKO will provide the Services described in the Order Form, including the following:

**a. DAXKO Operations Services:** Subject to the terms and conditions of this Agreement and the performance by Customer of its obligations under this Agreement, DAXKO hereby grants to Customer a non-exclusive, revocable, non-transferable, non-sublicensable license during the Term of this Agreement for the authorized users of Customer to access and use, for Customer’s internal business purposes, the Services as described in the Order Form. During the Term, DAXKO agrees to provide Customer with all updates to the Services which are generally released to DAXKO’s customers. 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 DAXKO regarding future functionality or features.

**b. Data Conversion:** DAXKO will provide data conversion services necessary to convert Customer’s membership demographic and billing information from a Microsoft Excel file. 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 DAXKO to perform its Services under this Agreement, and agrees to provide DAXKO 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 DAXKO’s best practices, six (6) months after the data conversion process is completed, DAXKO will irrevocably destroy any copies of the legacy Customer data used in the data conversion process that are still in DAXKO’s possession.

**c. Managed Services:** DAXKO shall be responsible for the hosting, maintenance, and support of all DAXKO-hosted software and DAXKO-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 DAXKO Operation’s 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 DAXKO (i) does not control communications via third party telecommunications providers and (ii) shall not be responsible for any error or inaccessibility associated with such



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telecommunications or any violation of law, rule or regulation applicable to transmission of data via such telecommunications.

**d. Technical Support:** DAXKO 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 DAXKO and Customer.
- Acknowledgement responses during normal business hours.
- System outages receive red-alert priority, which means that DAXKO 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 DAXKO at an emergency cell phone number. DAXKO will contact Customer regularly, providing status updates until final resolution.
- Customer agrees that from time to time DAXKO may perform periodic routine scheduled maintenance, provided that Customer is provided with advance notice of the same.
- Customer shall promptly provide DAXKO with detailed error notices describing all errors at a level of detail sufficient for DAXKO to resolve errors, and Customer shall assist DAXKO in recreating errors and resolving errors by providing DAXKO 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 and agrees that: (a) any transactions are between Customer and Customer's Card Holder; (b) DAXKO is a third party service provider and payment facilitator for Customer, and not a party to any transaction; (c) DAXKO is not a buyer or seller in connection with any transaction; (d) DAXKO 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 DAXKO is not a party to and will not be responsible for any such disputes.

**b. Transaction Processing Services:** DAXKO collects and relays payment information generated in connection with payment transactions to process the transactions on behalf of Customer using the appropriate networks. DAXKO, through DAXKO Payment Services or a third party provider, will establish a credit card or EFT transaction gateway to Customer's merchant account to provide these payment processing services to Customer. Customer acknowledges and agrees that DAXKO 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 DAXKO 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 Daxko Payment Services if selected in the Order Form, with

providers approved by DAXKO during the Term of this Agreement. Customer acknowledges that DAXKO 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, DAXKO 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 DAXKO is unable to rectify such situation. 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 DAXKO is not a financial or credit reporting institution. DAXKO 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.** DAXKO 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. DAXKO 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. DAXKO does not guarantee the security of the Services and will not be responsible for any infiltration of its security systems so long as DAXKO has used commercially reasonable efforts to prevent such infiltration. In no event will DAXKO 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:

- a. Upon Termination of Merchant Processing Agreement(s):** In the event that one or more of Customer's merchant processing agreement(s), including any agreement(s) for Daxko Payment Services, is terminated with the credit card or EFT payment processor utilized in connection with this Agreement, DAXKO may, in DAXKO'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.
- b. Termination for Unlawful Use:** DAXKO reserves the right to immediately terminate Customer's use of the Services, if DAXKO, in its sole discretion, determines that Customer's use of the Services is unlawful or if Customer transmits any Prohibited Material (as defined in Section 5).
- c. Termination for Insolvency:** This Agreement shall be deemed terminated immediately in the event that:
  - (i) 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, DAXKO 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 DAXKO may have sustained because of Customer's insolvency, including, but not limited to, attorney and collection agency fees.

- d. 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, DAXKO, 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 DAXKO) prior to the expiration date of the Initial Term or any Renewal Term, Customer shall be obligated to pay to DAXKO 100% of the fees that DAXKO 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. Customer agrees that (a) a breach by Customer under this Agreement is a breach under all other agreements between Customer and DAXKO, and a breach by Customer under any other agreement between DAXKO and Customer is a breach of this Agreement, and (b) all other agreements between Customer and DAXKO are amended to include this provision.
- e. Suspension of Services:** DAXKO 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) DAXKO reasonably believes Customer's breach compromises the security of the payment processing services; (iv) DAXKO 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.

#### 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 DAXKO for any pre-paid non-cancellable pre-scheduled expenses associated with the on-site services.

**b. Managed Service Fees:** Customer shall pay monthly managed service fees in accordance with terms set forth in the Order Form.

**c. Adjustment of Managed Service Fees Upon Purchase of a Target:** If Customer merges with, acquires or otherwise purchases (a "Purchase") an association, branch, or facility (the "Target"), then Customer agrees to submit new Form A within thirty (30) days after the effective date of the Purchase, and Customer's monthly managed service fees as described above shall be recalculated to include Target's annualized financial results as reflected in the updated Form A. Customer agrees that the increased fee may be charged to Customer as of the date that the Target site is activated and launched on DAXKO Operations. If Customer fails to submit an updated

Form A within thirty (30) days after a Purchase of a Target, then the penalty fees set forth in Section 4(e) below may be applied by DAXKO beginning in the month after the Purchase, and Customer shall be deemed to be in breach. Customer acknowledges and agrees that additional system configuration, data conversion, training and consulting services, at DAXKO's then-current rates, may be necessary to launch the Target on DAXKO Operations.

**d. Consulting Fees:** Optional consulting services are offered at the then current DAXKO rate. Customer will provide authorization to DAXKO before any optional consulting services are performed. Consulting services may include, but are not limited to, data conversion, additional training, programming, and marketing services.

**e. Past Due Payments; Past Due Form A:** 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 DAXKO when due. In addition, DAXKO 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 DAXKO. 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 DAXKO. If any amount owed by Customer under this Agreement or any other agreement with DAXKO is sixty (60) or more days overdue, DAXKO may, without limiting DAXKO's 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 DAXKO's Services to Customer until such amounts are paid in full. If Customer does not turn in a completed Form A to DAXKO when required by the Order Form, DAXKO 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.

**f. 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 DAXKO's net income) that are assessed on or as a result of the Services. Any such taxes, fees and duties collected by DAXKO 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 DAXKO for the Services hereunder.

## 5. CUSTOMER RESPONSIBILITIES; COMPLIANCE WITH THE LAW

**a. Authorized Representatives:** Customer agrees that it will only allow its authorized representatives 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 and financial services laws and regulations. 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





# Daxko Operations Service Agreement

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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").

DAXKO reserves the right to terminate Customer's use of Services, if DAXKO, 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, DAXKO 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).

## 6. TITLE TO PRODUCTS AND SERVICES

All title to equipment and software licenses provided by DAXKO for performing the Services are the property of DAXKO or its licensors, and remain the property of DAXKO 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 DAXKO 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"), DAXKO 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 DAXKO; (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 DAXKO, Customer agrees to access the Services only through the interface that is provided by DAXKO 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 DAXKO 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 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 DAXKO. Customer understands that DAXKO may use Customer's information, including Customer Data, for non-identifiable, aggregate reporting for all DAXKO clients, and Customer agrees that any aggregate non-identifiable information or data compiled or collected by DAXKO 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

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 DAXKO 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 DAXKO 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 § 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).

## 7. TRADEMARK AND DOMAIN NAME RIGHTS

Customer grants to DAXKO 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 DAXKO 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.

## 8. TREATMENT OF CONFIDENTIAL INFORMATION

From time to time one party (the "Receiving Party") may receive from the other party (the "Disclosing Party") proprietary and confidential information ("Confidential Information"), including, without limitation, the terms and conditions of this Agreement, financial information, pricing, business plans, usernames, passwords, DAXKO 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. 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. "DAXKO Technology," for purposes of this Agreement, means the proprietary technology of DAXKO, 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 DAXKO (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 if 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.

As between DAXKO and Customer: (i) DAXKO shall own all DAXKO 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, DAXKO shall not have any right, title, or interest therein.

## 9. WARRANTIES; DISCLAIMERS; LIMITATIONS OF LIABILITY

a. DAXKO warrants that:

- (i) all software and equipment utilized by DAXKO 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 DAXKO's service specifications;
- (ii) all work performed by DAXKO in providing Services will be performed in a good and workmanlike manner;
- (iii) DAXKO 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) DAXKO has sufficient legal rights to provide Services to Customer.

**b. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, DAXKO PROVIDES, AND CUSTOMER ACCEPTS, THE SERVICES IN "AS-IS" CONDITION; AND DAXKO 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 DAXKO 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. DAXKO SHALL HAVE NO LIABILITY ARISING FROM CARDHOLDER DATA TRANSMISSION WHICH OCCURS PRIOR TO ENCRYPTION AND RECEIPT BY SERVERS OWNED OR CONTROLLED BY DAXKO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DAXKO SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTIFY THEFT, OR INVASION OF PRIVACY BY ANY THIRD PARTY. DAXKO 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. DAXKO EXPRESSLY DISCLAIMS ANY WARRANTY AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES. DAXKO EXPRESSLY DISCLAIMS ANY WARRANTY OR**





# Daxko Operations Service Agreement

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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 DAXKO'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 DAXKO AND ITS AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS.

c. In the event of any default by DAXKO 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 DAXKO. 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 DAXKO pursuant to the notification requirement of this Agreement. Such written notification must be provided to DAXKO 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.

d. 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 DAXKO is not responsible for the services or products of such third parties.

## 10. INDEMNIFICATION

Except as provided below, Customer agrees to defend, indemnify, and hold harmless DAXKO 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 Customer's failure to use Services as permitted under this Agreement (or from any violation or breach of this Agreement by Customer) provided that DAXKO (a) gives Customer written notice of any such claim within fifteen (15) days of DAXKO's receipt of such claim, (b) permits Customer to have sole 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, DAXKO 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 DAXKO written notice of any such claim within fifteen (15) days of Customer's receipt of

such claim, (b) permits DAXKO to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provides DAXKO all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim. If the Services becomes, or in DAXKO's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, DAXKO 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 DAXKO is unable to provide one of the remedies in (i) or (ii) within forty-five (45) days of notice of the claim, DAXKO shall have the right to terminate this Agreement. Notwithstanding the foregoing, DAXKO 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 DAXKO, (ii) any combination or use of the Services with products or services not supplied by DAXKO or approved in writing by DAXKO 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 DAXKO 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 DAXKO with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights by the Services or any part thereof. Customer will immediately inform DAXKO as soon as Customer becomes aware of any threatened or actual liability claim by a third party relating to the Services.

## 11. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, or via a recognized national overnight delivery service addressed as specified on the Order Form. Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

## 12. GENERAL

- a. Customer's rights to use Services are personal to Customer, are non-exclusive, non-transferable and non-sub licensable. Customer shall not attempt to assign or transfer any rights or obligations under this Agreement without the prior written approval of DAXKO. Any attempt to assign this Agreement in violation of the provisions of this paragraph will be void and of no force or effect. Customer and any attempted transferee shall be jointly and severally liable to DAXKO for any costs or damages incurred by DAXKO in connection with attempted assignments not permitted by this paragraph. This Agreement shall inure to the benefit of the parties hereto and is not intended to inure to the benefit of Customer's clients nor any other third parties.
- b. Customer acknowledges that DAXKO has set its prices and entered into this Agreement in reliance upon the limitations and exclusions of liability, the disclaimers of warranties and damages and Customer's indemnification obligations set forth herein and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if this Agreement is found to have failed of its essential purpose.

- c. DAXKO's performance hereunder shall be excused where delayed or hindered by war, riots, civil unrest, embargoes, strikes or other concealed acts of workmen, casualties, accidents, acts of nature (including flood or earthquake), computer attacks (whether by government/nation entities or otherwise), or other occurrences beyond DAXKO's control. Customer agrees that DAXKO is not responsible or liable for acts of God or Internet blackouts and brownouts beyond the control of DAXKO. DAXKO shall notify Customer in the event of any of the foregoing occurrences. Should such occurrence continue for more than thirty (30) days, DAXKO or Customer may terminate this Agreement with no further obligation, except for the payment of fees incurred prior to the event giving rise to the termination.
- d. Any legal action arising out of DAXKO'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.
- e. Neither party to this Agreement will solicit for employment nor knowingly employ 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.
- f. The Services are subject to DAXKO's sunset or discontinuation policy ("Sunset Policy") and DAXKO 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, which is expressly incorporated by reference herein. From time to time, DAXKO may change the terms and conditions of the Sunset Policy. DAXKO will notify Customer of any such change. For the latest version of the Sunset Policy, go to <http://daxko.com/daxko-sunset-policy> or such other site designated by DAXKO. Customer's continued use of the Services will indicate Customer's agreement to any change in the Sunset Policy.
- g. The headings used in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. The provisions of Sections 2.a, 2.c, 2.d, 3-8, 9.b, 9.c, and 11 - 13 of this Service Agreement shall survive any termination or expiration of the Agreement.
- h. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, 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, Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its 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 Customer or its 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.
- i. During the Term, Customer agrees that Daxko 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 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



# Daxko Operations Service Agreement

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this Agreement.

## 13. ENTIRE AGREEMENT

This Service Agreement and all order forms, schedules, attachments, and terms and conditions, including, without limitation, the Order Form, which are incorporated by reference herein, or in an applicable Order Form, collectively represent the complete agreement and understanding between DAXKO and Customer with respect to the subject matter herein and supersede any other written or oral agreement. The terms and conditions of this Agreement may only be modified in writing and must be signed by DAXKO and Customer; provided, however, that from time-to-time, DAXKO may update and revise this Service Agreement, and such updates and revisions shall become a part of this Agreement upon DAXKO providing notice of the updated and revised terms to Customer.