

Daxko Vault

Terms of Service

The Daxko Vault service is comprised of a database (the “**Database**”) managed, owned or created by Daxko, LLC (“**Daxko**”) (or its licensors) which contains certain data relating to Customer or Customer’s members (“**Data**”). Customer’s use of the Data and Database is governed by the Order Form entered into between Daxko and Customer, together with these terms of service (the “**Terms of Service**”), which together constitute a binding legal agreement between Customer and Daxko (collectively, the “**Agreement**”).

Each time Customer uses the Database, Customer is accepting these terms. If Customer does not agree to these Terms of Service, Daxko is unwilling to grant Customer the right to use the Database, and Customer must cease use of the Database immediately. If the signatory is accepting on behalf of the signatory’s employer or another entity, the signatory represents and warrants that: (i) signatory has full legal authority to bind Customer to this Agreement; (ii) Customer has read and understands the Agreement; and (iii) the signatory agrees, on behalf of Customer, to the Agreement.

CUSTOMER ACCEPTS THE AGREEMENT AND THESE TERMS OF SERVICE BY (1) SIGNING THE ORDER FORM BETWEEN CUSTOMER AND DAXKO INTO WHICH THESE TERMS OF SERVICE ARE INCORPORATED BY REFERENCE OR (2) ACTUALLY ACCESSING OR USING THE DATABASE. THE TERMS OF SERVICE STATED HEREIN MAY BE UPDATED AND REVISED FROM TIME TO TIME. CUSTOMER AGREES THAT SUCH UPDATED AND REVISED TERMS OF USE SHALL BE EFFECTIVE AS OF THE DATE CUSTOMER IS PROVIDED NOTICE OF THE UPDATED AND REVISED TERMS AND ACCEPTS THE SAME IN ACCORDANCE WITH THE PRECEDING PROCESS.

1. LICENSE

1.1 License. Daxko grants Customer a limited, non-exclusive, non-transferrable, right and license, during the Term, to access, use, and reproduce, subject to the restrictions set forth herein, (“**Use**”) 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 Section 1.2 below or with the prior written permission of Daxko.

1.2 Limitations. Customer has 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 Daxko pursuant to a Data Access Authorization Form. Notwithstanding the foregoing, Daxko reserves the right to deny access to the Database and Data Access 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, 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.

1.3 Connectivity and Access. Notwithstanding any other portion of this Agreement, Customer understands and acknowledges that Daxko shall not be liable for any disruption in service or unavailability of Data, Database or the Data Access caused by Internet service being unavailable, by scheduled or unscheduled maintenance, data migration or other similar tasks, by electrical fault, fire, water damage, hardware failure, any natural disaster, acts or omissions of utility or service providers or others, or by any other event or condition that is outside of Daxko's reasonable control. Customer understands that Daxko may undertake maintenance, data migration and other similar tasks at such times as it deems appropriate. We will notify Customer of planned maintenance or of similar tasks of which we are aware as soon as is reasonably practicable. Daxko will not arrange for, pay for or maintain the communication lines between Customer and Daxko. Customer acknowledge that the Internet is and relies upon a complex communications system, and communication may be interrupted or fail even where the server and software are properly configured and connected.

1.4 Confidential Information and Security. Customer acknowledges that the information provided to Customer by Daxko under this Agreement, including, without limitation, the Database, Data Access, connection strings, usernames, license keys, and passwords are "**Confidential Information**" of Daxko or its licensors. Customer will protect the Confidential Information with the same level of security measures that Customer uses to protect Customer's own confidential information, but no less than reasonable measures. By way of example, this includes measures like keeping Customer's password private. Daxko cannot and will not be liable for any loss or damage from Customer's failure to comply with this security obligation. Customer will be solely

responsible and liable for any activity that occurs with Customer's account. Providing any third-party, except for Authorized Contractors, with access to the Database or Data Access is strictly prohibited. Customer agrees to seek consent of Daxko before allowing any third-party access. Daxko is not responsible for the acts of any third-party not under Daxko's direct, contractual control.

1.5 Laws. Customer covenants and agrees that Customer will not use the Data, Database or Data Access for any abusive or illegal purposes. Customer also covenants and agrees that Customer will not violate the laws of any jurisdiction that are applicable to Customer or Customer's business (including, without limitation, copyright, health information, privacy, security, and information protection laws).

1.6 Ownership. Daxko or its licensors own and retain all of their proprietary rights in the Database and Data Access. Customer acknowledges that Daxko 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, Daxko 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 Daxko and its licensors. This 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 Daxko 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 Daxko 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. Notwithstanding the foregoing, Daxko acknowledges that the Data which originates from Customer ("**Customer Data**") is Customer's property; provided however, that as between the parties, Daxko is the owner of all right, title and interest in and to the Database, including the selection, arrangement and organization of the Data therein, and the Data Access, and all license keys and passwords required for the use thereof. "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

1.7 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**”) 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. Daxko is not responsible for, and does not warrant, the Third-Party Services, and shall not be responsible for any disclosure, modification, or deletion of Data resulting from Customer’s access or use of any Third-Party Services.

2. FEES

2.1 Fees. Customer is responsible for the timely payment of all fees associated with the Data, Database and Data Access. Daxko may increase fees at anytime with such increase being effective ninety (90) days after providing written notice in accordance with Section 5.3 of the fee increase (and subject to Section 4.2). All fees are non-refundable.

2.2 Suspension. Daxko may suspend Customer’s access to the Data, Database and Data Access or the provision of updates to Customer in event of Customer’s non-payment.

2.3 Taxes. All amounts due to Daxko hereunder are net of all taxes (including withholding taxes), assessments, charges.

3. LIMITATIONS OF LIABILITIES

3.1 Usage. Customer’s use of, or failure to use, the Data, Database or Data Access is at Customer’s sole risk. DAXKO IS NOT THE ORIGINATOR OF THE DATA IN THE DATABASE; ACCORDINGLY, DAXKO 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. Customer acknowledges that this is offered as a new product and it makes no representation about the accuracy of the presentation of the information.

3.2 Disclaimer. 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.

3.3 Cap. 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 DAXKO 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.

3.4 General Disclaimer. Customer acknowledges and agrees that Daxko is not responsible for any Data provided in the Database or Data Access. By purchasing a subscription, Customer acknowledges that Daxko 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 DAXKO 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 LOSS OF DATA, WHETHER OR NOT DAXKO 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 Daxko harmless with respect to any claims arising out of or relating to Customer's unauthorized use of the Data, Database or Data Access.

3.5 Essential Basis. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between Customer and Daxko, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including the economic terms, would be substantially different.

4. TERM AND TERMINATION.

4.1 Term. This Agreement commences on the date Customer first accesses the Data, Database or Data Access and will continue for a term that is co-terminus with the duration of Customer's Daxko Operations agreement, unless and until terminated pursuant to this Section 4, unless otherwise stated in the Order Form (the "**Term**"). Daxko may notify Customer at any time that this Agreement will not be renewed for a subsequent period.

4.2 Termination by Customer. If Customer wish to terminate this Agreement, Customer should notify Daxko in writing. Upon Daxko's receipt of Customer's request, Customer's subscription will no longer automatically renew and will expire at the end of the then-current subscription period. Customer may also terminate this Agreement by providing written notice of Customer's intent to terminate to Daxko within sixty (60) days after receiving a notification of a price increase by Daxko with such termination being effective sixty (60) days after Daxko's receipt of the notice of termination. In the event of termination or expiration of Customer's Daxko Operations agreement, this Agreement and Customer's subscription shall automatically terminate. Customer agrees to pay all fees required under the Order Form prior to the effective date of any termination hereof.

4.3 Suspension or Termination by Daxko. Daxko 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 Daxko decides to no longer offer access to the Data or Database via the Data Access under the terms of this Agreement, Daxko may terminate this Agreement at any time upon thirty (30) days prior written notice. Daxko may suspend or terminate Customer's access to the Data, Database or Data Access if Customer is in breach of this Agreement. Daxko may suspend or terminate Customer's Use of the Data, Database or Data Access in the event Customer's use detrimentally impacts Daxko or other users who have access to the Data, Database or the Data Access, or other Daxko software or services, or in the event Daxko believes that such detrimental impact is likely to occur, as determined in Daxko's sole discretion. Further, Daxko may suspend or terminate Customer's access to the Data, Database or Data Access in the event that Customer fails to Use the same for a ninety (90) day period. Daxko reserves the right to remove any Data or Database from the Data Access at any time.

4.4 Survival. Sections 1.5, 1.7, 1.8, 2, 3, 4.5, and 5 will survive the expiration or termination of this Agreement.

5. GENERAL TERMS; MISCELLANEOUS.

5.1 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, excluding the conflicts of laws 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 Customer's 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 Customer's 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.

5.2 Independent Contractor. Daxko is an independent contractor and will not be deemed for any purpose to be an employee of Customer. This Agreement will not be interpreted or construed to create an employment relationship, an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon either party.

5.3 Notice. All notices required or permitted hereunder will be in writing, delivered

personally, by email, or by nationally recognized overnight courier (e.g., FedEx) at the parties' respective addresses set forth on the cover page. All notices will be deemed effective upon personal delivery, or when received if sent by email or overnight courier.

5.4 Waiver. The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and remain in full force and effect.

5.5 Assignment. Customer may not assign this Agreement or any right, interest or benefit hereunder without the prior written consent of Daxko, not to be unreasonably withheld. Any assignment in violation of the foregoing will be null and void.

5.6 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect thereto.

5.7 Severability. If any provision of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby, and the parties will substitute for the affected portion an enforceable provision which closest approximates the intent and the economic effect thereof.