

# Terms of Service

Last Update: August 15, 2013

URL: <http://www.daxko.com/raptorterms>

DAXKO, LLC (“we”, “us”, or “our”) provides the Raptor Batch Screening Tool (the “System”) and related services to you (collectively, the “Service”) to you (“you” or “your”) pursuant to a Raptor Service Agreement that we have entered into with you. **BY ACCESSING OR USING THE SYSTEM OR ANY OTHER PORTION OF THE SERVICE (AS APPLICABLE) YOU AGREE TO AND ACCEPT THE FOLLOWING TERMS AND CONDITIONS OF ACCESS AND USE (THE “TERMS OF SERVICE”). IF YOU DO NOT AGREE TO ALL OF THE TERMS, CONDITIONS, AND PRACTICES SET FORTH BELOW, DO NOT ACCESS OR USE THE SYSTEM OR ANY OTHER PORTION OF THE SERVICE FOR ANY PURPOSE WHATSOEVER.** Capitalized terms used in the Terms of Service but not otherwise defined herein shall have the meanings provided for such terms in the Raptor Service Agreement.

Any new features or updates that augment or enhance the current Service and are made available to you pursuant to the Raptor Service Agreement, including the release of new tools and resources, shall be subject to the Terms of Service. We reserve the right to update and change the Terms of Service from time to time. If we make changes to the Terms of Service then we shall notify you in accordance with Section 11 of these Terms of Service and change the “last updated” date displayed above. Continued use of any portion of the Service after any such changes shall constitute your consent to such changes. You can review the most current version of the Terms of Service at any time at <http://www.daxko.com/raptorterms>.

If you are using the Service on behalf of an organization, company or other legal entity, you represent and warrant that you have the authority to bind that organization, company or other legal entity to these Terms of Service and, in such event, “you” will refer and apply to that organization, company or other legal entity.

In the event of a conflict between these Terms of Service and the Raptor Service Agreement or any other service agreement between us, then such service agreement shall take precedence over these Terms of Service.

## 1. YOUR ACCOUNT

- a. **Secure Your Account:** You are responsible for maintaining the security of your account and password. We 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.
- b. **Respect Laws:** You covenant and agree that you will not use the Service 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 but not limited to copyright and privacy laws).

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- c. **Respect 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 used or provided by us in connection with the Service, or otherwise attempt to discover any source code, algorithms, trade secrets or other proprietary rights embedded in or relating to the Service by any means whatsoever.
- d. **Respect Scope of License:** You have been granted the right to access the System through the Client Portal and to use, and to allow your employees and representatives to use, the Service only for your internal business purposes at certain authorized locations described in the Raptor Service Agreement. Unauthorized use of the Service 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 Service 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 Service or the results of the Service in any form whatsoever, or use the System or any other part of the Service in connection with any commercial timesharing, service bureau or other similar rental or sharing arrangements involving third parties.
- e. **Understandings Regarding Connectivity and Access:** Notwithstanding any other portion of these Terms of Service or the Raptor Service Agreement, you understand and acknowledge that we shall not be liable for any disruption in service or unavailability of data 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 our reasonable control. As Raptor Technology hosts and maintains the System, you understand that Raptor Technologies may undertake maintenance, data migration and other similar tasks at such times as it deems appropriate. We will notify you of any such planned maintenance or similar tasks of which we are aware as soon as is reasonably practicable. We will not arrange for, pay for or maintain the communication lines between you and us or you and Raptor Technologies as part of this Agreement. You acknowledge that the Internet is and relies on a complex communications system, and communication may be interrupted or fail even where the server and software are properly configured and connected.

## 2. USE OF NON-DAXKO PRODUCTS

- a. **Non-Daxko Products and Services:** We or third parties may make available to you additional third-party products or services, including, but not limited to, fitness activity trackers, insurance policies, social media networks, and content providers, that are intended to work with the Service (“Non-Daxko Applications”). Any acquisition by you of such Non-Daxko Applications, and any exchange of data between you and any non-Daxko provider, is solely between you and the applicable non-Daxko provider. We do not warrant or support Non-Daxko Applications except as specified in a service agreement between you and us.

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- b. **Non-Daxko Applications and Your Data:** By entering into the Raptor Service Agreement, you have granted us permission to allow Raptor Technologies, the owner of the System and the party responsible for hosting and maintaining the System, to access your data entered into the System or otherwise provided in connection with the Service (“Your Data”) as required for the operation of the System and the provision of the Service. If you install or enable any other Non-Daxko Application for use with the Service, you grant us permission to allow the provider of that Non-Daxko Application to access Your Data as required for the interoperation of that Non-Daxko Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by Raptor Technologies or a Non-Daxko Application.
- c. **Integration with Non-Daxko Applications:** The Service may contain features designed to interoperate with Non-Daxko Applications. To use such features, you may be required to obtain access to Non-Daxko Applications from their providers, and may be required to grant us access to your account(s) on the Non-Daxko Applications. If the provider of a Non-Daxko Application ceases to make the Non-Daxko Application available for interoperation with the corresponding Service features on reasonable terms, we may cease providing those Service features without entitling you to any refund, credit, or other compensation.
- d. **Access to Individual Data:** Your employees, staff, and/or constituents (“Your Associates”) will have access to the Service through the accounts and passwords provided by Raptor Technologies. Your Associates may install or enable access to such accounts through Non-Daxko Applications. We are not responsible for any disclosure, modification or deletion of data in such accounts resulting from access by Non-Daxko Applications.

## 3. BILLING AND PAYMENTS

- a. **Late Fees:** We will charge interest of one and a half percent (1.5%) per month (or the highest rate permissible under applicable law, if less) on all undisputed amounts not paid by you to us when due. We may also block your access to the Service without terminating the Service or affecting your obligation to make payments if you are more than thirty (30) days delinquent on any undisputed invoices. Under no circumstances shall you have any right to offset your payments.
- b. **Taxes:** You will pay any and all applicable international, federal, state, and local sales, use, value-added, excise, duty, and any other taxes, fees, or duties not based on our net income that are assessed on or as a result of the Service. Any such taxes, fees, and duties collected by us from you on behalf of a governmental agency shall not be considered a part of, a deduction from, or an offset against, payments due to us for the Service.

## 4. CONFIDENTIAL INFORMATION

- a. **Protection of Confidential Information:** From time to time one of us (the “Receiving Party”) may receive from the other of us (the “Disclosing Party”) proprietary and confidential information (“Confidential Information”), including,

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without limitation, the terms and conditions of using this Service, employee information, financial information, business plans, Daxko Technology (as defined below), 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 it will treat the Confidential Information as confidential, hold the Confidential Information in trust for the Disclosing Party, not use the Confidential Information except as strictly necessary for the use or provision of the Service (as applicable) in the ordinary course of provision thereof in accordance with the terms of the Raptor Service Agreement and these Terms of Service, and not disclose the Confidential Information without permission of the Disclosing Party other than to those employees of the Receiving Party who: (i) need to know the Confidential Information for such permitted purpose; (ii) are required by terms of their employment or contractual relationship with the Receiving Party to comply with the requirements of this Agreement; and (iii) for whom the Receiving Party will be responsible for enforcing the confidentiality of Confidential Information. The Receiving Party shall protect the Confidential Information by using at least the same degree of care as the Receiving Party uses to protect its own information that it desires to keep as confidential, but no less than a reasonable degree of care, to prevent the unauthorized use or disclosure of the Confidential Information. The nondisclosure obligations set forth in this paragraph shall not apply to any particular item of information that the Receiving Party can document is generally available to the public (through no fault of the Receiving Party), or was already lawfully in the Receiving Party’s possession on a nonconfidential basis at the time of receipt of the information from the Disclosing Party, or was obtained by the Receiving Party on a nonconfidential basis from a third party without a breach by the third party of any obligation owed to the Disclosing Party. “Daxko Technology” means our proprietary technology, 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 us, whether during the term of a service agreement between you and us or otherwise. Both of our obligations described in this paragraph shall survive indefinitely.

- b. **Compelled Disclosure:** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent it is, in the opinion of its legal counsel, compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

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- c. **Equitable Remedies:** Each Receiving Party acknowledges and agrees that, due to the unique nature of the Disclosing Party's Confidential Information, there may be no adequate remedy at law for any breach of its obligations under this Section 4, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law, without the requirement of posting bond or other security or proving actual damages. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

## 5. NON-U.S. USERS

- a. If you are located outside the United States of America then by using the Service, you understand and consent to the processing of personal information in the United States.

## 6. INTELLECTUAL PROPERTY

- a. **Respect Copyrights:** All information that you post to the Service must comply with applicable copyright laws.
- b. **Our Intellectual Property:** Subject to the limited rights expressly granted hereunder, we and our licensors reserve all of our/their right, title and interest in and to the Service, including all of our/their related intellectual property rights. Except for the licenses we explicitly grant by these Terms of Service or the Raptor Service Agreement between us, you have no right, title, or interest in or to the Service, and no title to or ownership of software, data, databases, processes, trade secrets, patents, copyrights, marks, other intellectual property or equipment used under or in connection with these Terms of Service and the Raptor Service Agreement, is transferred to you or any of your representatives.
- c. **Publicity:** Notwithstanding any other provision hereof, you hereby consent to our referring to you by name as a customer in our advertising and promotional materials, and we hereby authorize you to reference us as a vendor in your advertising and promotional materials.

## 7. NO WARRANTIES OR REPRESENTATIONS

- a. YOU UNDERSTAND AND AGREE THAT THE SERVICE IS PROVIDED "AS IS" AND WE EXPRESSLY DISCLAIM WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OR REPRESENTATION, AND HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR ANY RELATED SOFTWARE, SERVERS, EQUIPMENT, DATABASES OR DEVICES (INCLUDING, WITHOUT LIMITATIONS, NON-DAXKO APPLICATIONS)

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(COLLECTIVELY, “RELATED SERVICES”), THE PERFORMANCE OF THE SERVICE OR THE RELATED SERVICES, THE CORRECTNESS OF ANY DATA ASSOCIATED WITH THE SERVICE OR THE RELATED SERVICES, THE SECURITY OF THE SERVICE OR THE RELATED SERVICES, OR THAT THE SERVICE OR THE RELATED SERVICES WILL MEET ANY USER’S REQUIREMENTS. WE DO NOT WARRANT THAT ACCESS TO THE SERVICE OR THE USE OF THE SERVICE OR ANY RELATED SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. USE OF THE SERVICE IS AT YOUR SOLE RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SERVICE. THE ENTIRE RISK ARISING OUT OF USE, SECURITY, OR PERFORMANCE OF THE SERVICE REMAINS WITH YOU. YOU UNDERSTAND THAT BOTH WE AND OUR LICENSORS USE THIRD PARTY VENDORS AND HOSTING PARTNERS TO PROVIDE THE NECESSARY HARDWARE, SOFTWARE, NETWORKING, STORAGE, AND RELATED TECHNOLOGY REQUIRED TO RUN THE SERVICE. WE, ALONG WITH OUR LICENSORS, RESERVE THE RIGHT TO MODIFY THE SERVICE FROM TIME TO TIME AT ANY TIME, INCLUDING ADDING OR REMOVING FEATURES. WITHOUT LIMITING THE FOREGOING, THE SERVICE IS NOT DESIGNED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS.

## **8. LIMITATIONS OF LIABILITY**

- a. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE USE OF OR THE INABILITY TO USE THE SERVICE OR ANY PORTION THEREOF, OR FOR ANY CLAIM BY ANY OTHER PARTY WITH RESPECT TO OR RELATED TO THE SERVICE OR ANY PORTION THEREOF, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF DAMAGES UNDER THIS SECTION IS INDEPENDENT OF THE EXCLUSIVE REMEDIES FOR CERTAIN CLAIMS THAT ARE DESCRIBED IN SECTION 9 BELOW AND SURVIVES IN THE EVENT ANY SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING DISCLAIMERS, WE ARE FOUND RESPONSIBLE TO YOU FOR ANY REASON WHATSOEVER, OUR RESPONSIBILITY SHALL BE LIMITED TO THE AMOUNTS THAT HAVE BEEN ACTUALLY PAID BY YOU FOR THE SERVICE AND ARE ALLOCABLE TO THE ONE (1) MONTH IMMEDIATELY PRECEDING SUCH EVENT. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM ANY CAUSE OF ACTION OR LEGAL THEORY, INCLUDING WITHOUT

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LIMITATION, A BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, OR INDEMNIFICATION, TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

## 9. INDEMNIFICATION

- a. **Indemnification by You:** Subject to the limitations described in Section 8 of these Terms of Service and except as otherwise provided below, you agree to indemnify and hold us harmless from any claim, demand or cause of action and all damages, judgments, decrees, costs and expenses, including attorneys' fees, arising from your failure to use the Service as permitted under these Terms of Service or a service agreement between us, provided that we (a) give you written notice of any such claim within fifteen (15) days of our receipt of such claim, (b) permit you to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provide you all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim. We reserve the right to assume, at our sole expense, the exclusive defense and control of any matter subject to indemnification by you, in which event you will fully cooperate with us in asserting any available defenses.
- b. **Indemnification by Us:** Subject to the limitations set forth in Section 8 of these Terms of Service and except as provided below, we agree to defend, indemnify, and hold harmless you and your 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 Service infringes a valid patent or copyright or misappropriates a trade secret of a third party provided that you (a) give us written notice of any such claim within fifteen (15) days of your receipt of such claim, (b) permit us to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provide us all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim. If the Service becomes, or in our opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, we may, at our option and expense, (i) procure the right to allow you to continue to use the Service or (ii) modify or replace the Service or infringing portions thereof to become non-infringing, without loss of material functionality. If we are unable to provide one of the remedies in (i) or (ii) within forty-five (45) days of notice of the claim, we shall have the right to terminate our service agreement with you. Notwithstanding the foregoing, we 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 Service not approved by us and performed by us, at our direction or pursuant to our express instructions, (ii) any combination or use of the Service with products or services not supplied by us or approved in writing by us in advance of such combination, (iii) any patent, copyright or trade secret in which you or your affiliates have an interest, or (iv) use of the Service not in accordance with its documentation or outside the scope of the license granted under a service agreement between us.

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Subject to the limitations described in Section 8 above, you agree to defend, indemnify, and hold harmless us and our 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 our entire liability with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights by the Service or any part thereof. You will immediately inform us as soon as you become aware of any threatened or actual liability claim by a third party relating to the Service.

- c. **Exclusive Remedy:** This section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

## 10. CANCELLATION AND TERMINATION

- a. **Export Your Data First:** All of your information will be immediately deleted from the Service upon expiration or termination of the Raptor Service Agreement for any reason. It is your responsibility to export your information before terminating the Raptor Service Agreement and cancelling your account. Your information cannot be recovered once your account is cancelled.
- b. **Default:** If you are in Default then we may terminate the Raptor Service Agreement and your right to use the Service. In addition, we may retain all payments you have made to us and recover charges and costs you owe us as well as any other damages we may have sustained because of your Default, including but not limited to attorney and collection agency fees. "Default" means: (i) you become the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding not dismissed within thirty (30) days; (ii) you make an assignment for the benefit of creditors; (iii) you admit in writing your inability to pay debts when due; or (iv) you fail, within thirty (30) days after receiving written notice from us, to remedy any breach of these Terms of Service or any service agreement between us.
- c. **Terminate With Cause:** You may terminate the Raptor Service Agreement and use of the Service by providing us with a notice of termination for cause. Such notice shall describe with reasonable specificity the alleged material default or failure of performance. If we are unable to substantially cure such material default or failure of performance within thirty (30) days then your termination for cause shall be effective on the date of the original notice. If you terminate the Service for cause then you agree to pay us any subscription or service fees you have incurred up to the termination date. We will not refund any previously paid service or subscription fees in connection with any termination of the Service.
- d. **Terminating Without Cause:** If you terminate the Service for any other reason besides for cause as described above then you agree to pay us a termination charge equal to 100% of the total unpaid charges that would have become due for



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the remainder of the scheduled minimum term if such cancellation had not occurred. Such termination charge shall be paid to us within thirty (30) days after such cancellation.

- e. **Blocking Access without Terminating the Service:** In the event you (i) breach the Terms of Service and such breach is, in our reasonable discretion, the result of your abuse of the Service or illegal activity with respect to the Service or (ii) are more than thirty (30) days delinquent on any undisputed invoices, we may immediately block your access to or otherwise suspend your right to use the Service until such time as the breach or delinquency in question is remedied. Any such suspension of the Service or blocking of access will not constitute a breach of, or termination of, the Raptor Service Agreement on our part.

## 11. NOTICES

- a. **Ways to Provide Notice:** Any notices or other communications permitted or required of either you or us under these Terms of Service, including those regarding modifications to these Terms of Service, shall be in writing and given: (i) via United States mail, postage prepaid, or via a recognized national overnight delivery service to the address provided in the service agreement between us, (ii) via email to address provided in the service agreement between us (provided email shall not be sufficient for notices of termination or an indemnifiable claim), or (iii) by posting to the Service.
- b. **Use of Your Email Address:** By registering with us, you understand that we may send you communications or data from us regarding the Service, including but not limited to (i) notices about your use of the Service, including any notices concerning violations of use, (ii) updates, and (iii) promotional information and materials regarding our products and services, via e-mail. We give you the opportunity to opt-out of receiving e-mail from us by following the opt-out instructions provided in the message.

## 12. GENERAL

- a. **Severability:** If any part of these Terms of Service are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of this agreement shall continue in effect.
- b. **Printed Version:** A printed version of these Terms of Service and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- c. **Reservation of Rights:** We reserve all rights not expressly granted herein.
- d. **Waiver:** If either party hereto fails to exercise or enforce any right or provision of these Terms of Service, it shall not constitute a waiver of such right or provision.

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- e. **Section Headings:** The section titles in these Terms of Service are for convenience only and have no legal or contractual effect.
- f. **Assignment:** You may not assign or transfer these Terms of Service, by operation of law or otherwise, without our prior written consent, which shall not be unreasonably withheld. Any attempt by you to assign or transfer these Terms of Service, without such consent, will be null and of no effect. We may assign or transfer these Terms of Service, at our sole discretion, without restriction. Subject to the foregoing, these Terms of Service will bind and inure to the benefit of the parties, their successors and permitted assigns, but is not intended to inure to the benefit of any other third parties.
- g. **Claims:** Any claim related to this contract or the Service must be brought within one year. The one-year period begins on the date when the claim first could be filed. If it is not, then that claim is permanently barred. This applies to you and your successors and permitted assigns. It also applies to us and our successors and assigns.
- h. **Independent Contractor:** Our relationship with you will be that of an independent contractor. Neither party hereto shall have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, joint venturer or partner between you and us.
- i. **Survival:** Sections 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 of these Terms of Service shall survive the termination of any service agreement between the parties.
- j. **Force Majeure:** Neither party shall be responsible for any failure to perform, or delay in performing any of its respective obligations under these Terms of Service, except for payment obligations, where and to the extent that such a failure or delay results from causes outside the control of such party. Such causes shall include, without limitation, delays caused by the other party, failures caused by a third-party service, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, civil commotion, or the like.

## 13. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES

- a. **Choice of Law:** These Terms of Service shall be governed and construed in accordance with the laws of the State of Delaware, excluding its conflicts-of-law principles.
- b. **Arbitration:** You agree that any disputes arising with us or our affiliates, subsidiaries, employees, contractors, officers, directors, or third party providers from or related to this contract shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association in Birmingham, Alabama pursuant to its Commercial Arbitration Rules. You shall 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.

## 14. QUESTIONS

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- a. If you have any questions about these Terms of Service, please contact us at [legal@daxko.com](mailto:legal@daxko.com).