



## MASTER SERVICE AGREEMENT

The services provided to the Customer identified in the Order Form are subject to Customer's assent to the terms and conditions contained in or incorporated by reference in the Order Form and contained in this Agreement. BY ACCEPTING THIS AGREEMENT, OR BY USING THE SERVICES, CONTACT REPRESENTS THAT SUCH CONTACT IS ACTING WITH AUTHORITY AS AN OWNER OR AUTHORIZED REPRESENTATIVE WITH AUTHORITY TO LEGALLY BIND CUSTOMER TO BECOME A CUSTOMER OF THE SERVICE AND OBTAIN THE SERVICE FOR USE BY OR FOR THE BENEFIT OF CUSTOMER. CUSTOMER WILL BE BOUND TO THIS AGREEMENT. CONTACT ACCEPTS THESE TERMS AND CONDITIONS ON BEHALF OF THE ENTITY BY (1) CLICKING ACCEPT OR OTHERWISE SIGNING (ELECTRONICALLY OR OTHERWISE) OR (2) ACTUALLY ACCESSING OR USING THE SERVICES. THE TERMS AND CONDITIONS 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 THAT SUCH TERMS ARE LOADED ONTO THE WEBSITE AND THAT CONTINUED USE OF THE SERVICES SHALL CONSTITUTE ACCEPTANCE OF SUCH TERMS.

### 1. Definitions.

- a. **Admin Website** - A mobile device application that allows mobile phone or similar internet capable device users (specifically users of devices operating on the iPhone or Android platforms) to view Customer programs and events online through the Software using a website template.
- b. **Agreement** - The terms and conditions contained in the Order Form and the terms and conditions of the Master Service Agreement entered into between Company and Customer, together with any other terms and conditions which may be incorporated by reference herein or therein, which together constitute a binding legal agreement between the Customer and Company.
- c. **API Service** - Includes any secure means of data exchange including application programming interface (API) access, file transfer protocol access, or other secure method approved by Company in writing.
- d. **Card Holder** – Any customer presenting payment information as authorized or approved by Customer User for the payment of Services or any other payment processing outlined in the Agreement or allowed in the Services
- e. **Confidential Information** - Proprietary and confidential information including, without limitation, the terms and conditions of the Agreement, financial information, Personal Information, pricing, business plans, usernames, passwords, Company Technology, and any information that is marked as "confidential" or should be reasonably understood to be confidential or proprietary to the Disclosing Party
- f. **Company** – Shall mean Daxko, LLC and any of its direct or indirect affiliates.
- g. **Company Technology** - Means the proprietary technology of Company, 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 Company (including, without limitation, any Feedback), whether during the term of this Agreement or otherwise.
- h. **Consumer Price Index** - The Consumer Price Index means the Consumer Price Index- All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics at [www.bls.gov](http://www.bls.gov) for the immediately preceding calendar year.



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- i. **Customer** – The legal entity defined under the “Customer” section of the Order Form together with Customer’s direct and indirect affiliates.
- j. **Customer Content** - Any content posted upon the Admin Website or in any Company system by Customer, including with respect to Customer or any end user.
- k. **Customer Data** - Means non-publicly available 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.
- l. **Customer Users** – All end users authorized by Customer to use the Services under the Agreement.
- m. **Data Access** – The process of Customer accessing the Database via credentials provided by Company.
- n. **Database** - A database managed, owned or created by Company (or its licensors) which contains certain data relating to Customer or Customer’s end users as a part of the Services.
- o. **Derivative Data** - Shall 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 (but excluding Customer Data) or because of Customer’s use of the Services or in connection with data a third-party transmits to Company through the API Service. Derivative Data shall also include use of Customer’s information, including Customer Data, in furtherance of this Agreement, and for non-identifiable, aggregate reporting for all Company clients, and any aggregate non-identifiable information or data compiled or collected by Company.
- p. **Disclosing Party** – A party providing Confidential Information.
- q. **Feedback** - 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, suggestions, improvements, and test results)
- r. **Form A** – A current, complete, and accurate revenue statement of Customer required to be kept on file with Company in the form of a Form A, Form J or Form B, or Form 990, as applicable.
- s. **Hardware** – Any hardware, equipment, parts, components, and accessories provided by Company to Customer under the Agreement.
- t. **IP Rights** - All intellectual property rights, including, without limitation, copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other similar property rights of the Software, websites, and all content, features, and functionality.
- u. **Launch Date** – The date as defined in the Order Form.
- v. **Licensed Product** - Licensed Product refers to the Company software product or services you license.
- w. **Monthly Managed Service Fee** – Monthly Customer fees due for Daxko Operations, Daxko Accounting, and/or Daxko Engage (as applicable). Customer's Monthly Managed Service Fee is calculated by multiplying Customer's Form A Line 33 Amount for the current Service Year by the Monthly Managed Service Fee Rate on the following table and dividing by twelve (12). Customer's



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pricing for Service Year 1 is set forth in Exhibit B of the Order Form and is subject to the monthly minimum amount quoted therein.

- x. **MPA** – A merchant processor agreement between Customer and an approved merchant processor.
- y. **Order Form** – The Order Form completed by Customer outlining the Services Selected and other vital information for associated with the Master Services Agreement.
- z. **Personal Information** - Means any information relating to an identified or identifiable individual or information that when combined with other information, may identify an individual.
- aa. **Prohibited Material** - ANY UNLAWFUL, HARMFUL, THREATENING, ABUSIVE, HARASSING, DEFAMATORY, VULGAR, OBSCENE, PROFANE, HATEFUL, OFFENSIVE, FRAUDULENT, LIBELOUS, PORNOGRAPHIC, OTHERWISE OBJECTIONABLE MATERIAL OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY MATERIAL WHICH ENCOURAGES CONDUCT THAT WOULD CONSTITUTE A CRIMINAL OFFENSE, OR THAT VIOLATES THE RIGHTS OF OTHERS, ON THE BASIS OF RACE, COLOR, SEX, RELIGION, ETHNICITY, NATIONAL ORIGIN, MARITAL STATUS, DISABILITY, AGE, SEXUAL ORIENTATION, OR GENDER IDENTITY, OR WHICH IS OTHERWISE OBJECTIONABLE AS REASONABLY DETERMINED BY COMPANY IN ITS DISCRETION, OR THAT IMPERSONATES OR INTIMIDATES ANY OTHERS, ATTACKS OR INTERFERES WITH THE PROPER WORKING OF THE SERVICES OR COMPANY WEBSITES, IN ANY WAY IMPAIRS THE SERVICES COMPANY WEBSITES, OR OTHERWISE VIOLATE ANY APPLICABLE LOCAL, STATE, NATIONAL OR INTERNATIONAL LAW.
- bb. **Receiving Party** – A party receiving Confidential Information.
- cc. **Security Breach** - Any breach or suspected breach in relation to (i) any Customer Data or Personal Information disclosed in violation of Vendor's agreement with Company with respect to the API Service or the Access Request Form, or (ii) any actual or suspected unauthorized access, disclosure or use of Customer Data that Vendor accesses via the API Service.
- dd. **Services** – Those items selected in the Order form "Description of Services".
- ee. **Service Year** - The Service Year is the period from the Launch Date or Launch Date anniversary to the next Launch Date anniversary.
- ff. **SOW** – Any statement(s) of work between Company and Customer outlining Services of fees.
- gg. **Sunset Policy** – As new versions, products, and services are introduced, Company plans for sunset of older services and software versions as well as specific product features.
- hh. **Term** – The initial length of the Agreement as described in the Order Form of all selected Services together with any renewal term as outlined in the Agreement.
- ii. **Third-Party Offerings** - Offerings from third-parties that are not direct Company Services under the Agreement and are not subject to any of the warranties, service commitments or other obligations with respect to Services hereunder. This includes any third-party products, applications, websites, implementations or services that the Services link to, or that interoperate with or are used in conjunction with the Service.
- jj. **Trademarks** – Any trade names, service marks, or trademarks, whether registered or not, as Company may from time to time by written notice permit or require Customer to use in connection with the Software or Services.



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**kk. User Contributions** - Any content or materials that a Customer User posts, submits, uploads, publishes displays or otherwise transmits on or through the Services, or provides to Company directly without regard to the originating source and including but not limited to contributions from Customer's end users or from outputs generated through artificial intelligence.

**ll. Vendor** - Shall mean any approved (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.

### 2. Description of Services

Company (either directly or through a third-party service provider) will provide the Services to Customer and all Customer Users subject to and conditioned on Customer's and its Customer Users' compliance with the terms of this Agreement. Company will use commercially reasonable efforts to make the Services available to Customer and any applicable Customer User at all times in accordance with the terms of this Agreement. In addition to the Services, Company will provide the following:

- a. License for Services Selected.** Subject to the terms and conditions of this Agreement and the performance by Customer of its obligations under this Agreement, Company grants to Customer a non-exclusive, revocable, non-transferable, non-distributable non-sublicensable, worldwide, royalty-free limited license during the Term of this Agreement for Customer to access, use, and display for Customer's business purposes, the Services as described in the Order Form. This license does not use any derivative use of the Services or any associated software outside of the uses defined in this Agreement and the Order Form and any applicable SOW. No part of the platform may be reproduced, duplicated, copied, sold, resold, transferred, or otherwise exploited for any commercial purpose without the prior express written consent of the Company. Any unauthorized use of the Services or any software created or allowed to be used under this Agreement terminates the permission and license granted in this Agreement.
- b. Data Conversion.** For the provision of certain services, Company may provide data conversion services necessary to convert Customer's information into a format compatible with the Services, and in a format determined by Company. Customer will obtain all rights of access required by any Third-party, with respect to Customer's data and existing software systems, for Company to perform its Services under this Agreement. Customer will provide Company access to Customer's operations to perform data conversion during normal business hours or at such other times and days as may be mutually agreed to by the parties. As part of Company best practices, six (6) months after the data conversion process is completed, Company may irrevocably destroy any copies of the legacy Customer data used in the data conversion process that are still in Company's possession. Company will make commercially reasonable efforts to import data from Customer's current software system, where available, to allow for use of such Customer data in providing the Services in accordance with Company's data conversion policies.
- c. Services.** Company will be responsible for the hosting, maintenance, and support of all Company-hosted software and Company-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 Company 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 Company (i) does not control communications via Third-party telecommunications providers and (ii) shall not be responsible for any error or inaccessibility associated with such telecommunications or any violation of law, rule or



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regulation applicable to transmission of data via such telecommunications. Company may use Third-party service providers to provide the Services to Customer.

**d. Technical Support.** Company agrees to provide Customer with technical support for the Services during the Term of the Agreement as follows:

- i. Phone and e-mail support provided for Customer's contact through a customer care center during normal business hours (7a.m. to 7p.m. CST Monday to Friday, exclusive of holidays). Customer's contact is the liaison between Company and Customer
- ii. Acknowledgement responses during normal business hours.
- iii. Company will provide immediate assistance (24 hours per day / 7 days per week) for Company's system outages until such outage is resolved. If Customer experiences a system outage, then Customer will contact Company at an emergency number available on Company's support website. Company will contact Customer regularly, providing status updates until final resolution
- iv. Customer agrees that Company may perform periodic routine maintenance, which generally will occur between the hours of midnight and 5AM CST. Outages during any such periodic routine maintenance will not constitute a Company system outage.
- v. Customer shall promptly provide Company with detailed error notices describing all errors at a level of detail sufficient for Company to resolve errors, and Customer shall assist Company in recreating errors and resolving errors by providing Company with any requested information or material.

**3. Term:** This Agreement will commence on the Launch Date as defined in the Order Form and shall continue for the Term

**4. Fees:**

- a. **Up Front Implementation Fees:** For all selected Services, Customer will be charged one-time, non-refundable fees for system configuration services, data conversion, training services, and other professional services as set forth in Exhibit B of the Order Form, exclusive of travel time. All additional professional services will be billed at Company's then-current rates.
- b. **Training:** Company will provide training and support on using the Services selected, inclusive of preparation and travel time in the maximum number specified in Exhibit B of the Order Form. All additional training hours will be billed at Company's then-current rates.
- c. **Transaction Gateway Fees:** Customer will pay Company the transaction fees listed in Exhibit B of the Order Form regardless of whether Customer is using Payment Processing Services.
- d. **Professional Services.** The deployment process for installation and training regarding Customer's use of the Services is set forth in the Order Form(s) and a subsequent SOW. The time for such installation and training is only an estimate and may be shorter or longer depending on the circumstances. Customer shall be responsible for the Startup and Training Costs set forth in the Order Form or SOW, which such costs are non-refundable. Certain professional services work and other expenses may not be included in the implementation fees stated in Customer's Order Form or SOW. Customer shall reimburse Company for out-of-pocket expenses, including travel expenses (flight, rental car, hotel, meals) incurred in providing any on-site training ("Reimbursable Expenses"). Training will be scheduled on dates and times mutually agreed to between the Parties. Once a mutually



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agreeable schedule is made, Company will notify Customer via email of the proposed schedule. If Customer cancels or reschedules training after this notification has been made ("Late Travel Cancellation Notice"), then Customer shall be responsible for the reimbursement of any change fees, cancellation fees, non-reimbursable deposits, or related expenses incurred by Company in connection with such cancellation or rescheduling, which shall also be deemed "Reimbursable Expenses." Company will provide the Customer with an itemized expense report for incurred expenses within 30 days of (i) the completion of the on-site training or (ii) the receipt of a Late Travel Cancellation Notice, if onsite training is cancelled. Additionally, Customer will, at its sole cost and expense, procure computer hardware and point of sale ("POS") equipment in consultation with Company during the implementation process. Hardware cannot be returned for a refund.

- e. **Auto-Debit Authorization:** Customer hereby authorizes Company to debit Customer's designated bank account to be identified to Company via separate documentation, which is due to Company at the time of the execution of the Order Form for the full amount of all fees, expenses and reimbursements then due under this Agreement. Customer's failure to maintain sufficient funds in its designated bank account to cover all invoiced fees and costs shall constitute a default for the failure to pay all such amounts. Within thirty (30) days after execution of this Agreement, if paying by debit, Customer shall complete and submit to Company an auto debit authorization form together with a voided check from Customer's designated bank account, with the necessary information for Company to debit, when they become due, the full amount of all fees, expense and reimbursements under this Agreement. Customer shall provide an updated authorization form to Company promptly upon any relevant changes to the information set forth therein. Customer is responsible for reimbursing Company for any fees or penalties incurred by Company in connection with debiting from the account designated by Customer. Company does not accept payment by check. Customer designates Company to resubmit all credit card, debit card, and/or ACH transactions that are declined. Customer agrees that Company will charge a Card Holder a return fee of \$30.00 and Customer User a return fee not to exceed the maximum state return fee.

### 5. Additional Payments 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 Company for any pre-paid non-cancellable pre-scheduled expenses associated with the on-site services. Unless otherwise indicated in Customer's Order Form(s) all training services and travel time will be billed at Company's then-current rates.
- b. **Service Fees.** Customer shall pay monthly service fees in accordance with terms set forth in the Order Form.
- c. **Data Usage Charges.** One or more of the Services may use information and data transmission networks operated by third parties to send data, information from a computer or device to one or more of Services. Customer may incur charges from such third-party operators for use of such third-party's information and data transmission networks. Customer is solely responsible for any and all costs, if any, including without limitation wireless and cellular data costs, that Customer may incur as a result of the usage of any Service and/or as a result of data, information and content submitted or received by Customer's computer or device through any Service.





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- d. **Additional Fees.** Additional services are offered at the then current Company rate. Customer will provide authorization to Company before any additional services are performed. Additional services may include, but are not limited to, data conversion, reactivation, additional training, programming, exit data fees, data extract fees, de-tokenization fees, marketing, and other professional services.
- e. **Past Due Payments; Late Fees.** 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 Company when due. In addition, Company 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 Company. The obligation to pay monthly 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 Company. If any amount owed by Customer under this Agreement or any other agreement with Company is sixty (60) or more days overdue, Company may, without limiting Company 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 Company's Services to Customer until such amounts are paid in full. If Customer believes that any amount has been billed in error, Customer must provide written notice to Company within forty-five (45) days after receipt of the relevant invoice(s) specifying the nature of the perceived error. Customer waives the right to dispute any fees or charges after such forty-five (45) day dispute period.
- f. **Collection Costs.** Customer agrees to pay any cost of collection for undisputed unpaid invoices, including but not limited to, court costs, and attorneys' fees. Customer agrees to pay interest at the rate of one (1%) percent per month, or the highest interest rate allowable by law (whichever is less), payable monthly on any past due payment due under this agreement.
- g. **Taxes.** Customer shall pay 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 Company's net income) that are assessed on or because of the Services. Any such taxes, fees and duties collected by Company 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 Company for the Services hereunder. Customer acknowledges and agrees that Company may make certain reports to tax authorities (e.g., 1099 forms) regarding transactions that Company processes and merchants to which Company provides Payment Processing Services. For clarity, Company will be solely responsible for taxes assessed on Company based on its income.
- h. **Data Export.** Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer's data in accordance with Company's then-current data export policy at then current standard fees.
- i. **Statements for Fees.** Unless otherwise stated in Customer's Order Form, statements for the fees quoted herein will be sent via electronic mail to Customer within the first five (5) business days of the service month. If Customer does not dispute the statements within five (5) days of receipt, then Customer's designated bank account will be automatically debited on the fifteenth (15th) day of the month. Statements for one-time, training, and consulting fees and other reimbursable expenses will be sent via electronic mail to Customer following the performance of the services and will be automatically debited ten (10) days from the date of the statement if not contested. Company does not accept payment by check. All payments in the Agreement are denominated in United States dollars, unless otherwise indicated in in Customer's Order Form. If Customer's Order Form indicates annual payment of service fees (but excluding any usage based or one-time fees), then statements for the



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fees though quoted in monthly increments will be sent, in advance, on an annual basis via electronic mail to Customer within the first five (5) business days of the service year. Customers electing to make payment via credit card rather than through electronic funds transfer may incur a convenience fee of up to three percent (3%), as permitted by law.

### 6. Terms Specific to Customers on a Form A Billing Model

- a. **Monthly Managed Service Fee:** If the Form A billing model is indicated on Customer's Order Form, then for the purpose of calculating Customer's fees due for Daxko Operations, Daxko Accounting, ReClique Core and/or Daxko Engage (as applicable), Customer agrees to pay a Monthly Managed Service Fee. For this purpose, Customer agrees to maintain a current, accurate, and Form A. Customer will be charged a Monthly Managed Service Fee and any other fees due for the Services listed in the Order Form by automatic bank account withdrawal (pursuant to the authorizations discussed in the section below) beginning on the Launch Date. Customer's Monthly Managed Service Fee is calculated by multiplying Customer's Form A Line 33 Amount for the current Service Year by the Monthly Managed Service Fee Rate on the Monthly Service Fee Table on Exhibit B of the Order Form and dividing by twelve (12). Customer's pricing for Service Year 1 is set forth in Exhibit B and is subject to the monthly minimum amount quoted therein. The Service Year is the period from the Launch Date or Launch Date anniversary to the next Launch Date anniversary. Customer's Form A Line 33 Amount for the current Service Year is the amount calculated on line 33 of Form A by using Customer's latest fiscal year financials as of the beginning of the current Service Year. Customer agrees to deliver to Company an updated Form A on each of the following dates: (i) the Effective Date; (ii) the Launch Date, (iii) within one hundred eighty (180) days after each fiscal year end during the Term, and (iv) within thirty (30) days of Customer's acquisition of, merger with, or purchase of another operating association, branch, location, or facility. Customer's failure to submit a timely Form A when due shall constitute breach of this Agreement. Upon Company's receipt of any Form A that was not delivered when due, Company shall have the right to (in addition to imposing late fees as described in the Service Agreement) retroactively adjust the amount of all invoices issued to Customer from the date such Form A was originally due, and Customer shall owe the adjusted amount(s) upon demand by Company. For the avoidance of doubt, any late fees incurred by Customer will not be used to offset any retroactive adjustment of invoiced amounts.
- b. **Adjustment of Managed Service Fees Upon Purchase of a New Asset.** If Customer purchases, merges with, or assumes control of a new location, facility, asset, or business, then Customer agrees to submit new Form A within thirty (30) days after the effective date of such purchase, and Customer's Monthly Managed Service Fees as described above shall be recalculated to include the new asset'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 later the date of that such new asset is launched on Company's software. If Customer fails to submit an updated Form A within thirty (30) days after a purchase or assumption of control of any such new asset, then the penalty fees set forth in Section 4(e) below may be applied by Company beginning in the month after the purchase or assumption, and Customer shall be deemed to be in breach. Customer acknowledges and agrees that additional system configuration, data conversion, training and consulting services, at Company's then-current rates, may be necessary to launch the new asset on Company's member management platform.
- c. **Form A Late Fees.** If Customer does not turn in a completed Form A to Company (where required by the Order Form), Company will apply late fees in the amount of five percent (5%) per month against the Customer's current monthly Service Fee until the completed Form A has been received.

7. **Terms Specific to Flex Fees** The Flex Fee Service is only available to Customers that are processing transactions through Company. Customer warrants and agrees that it is solely responsible for providing all





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necessary consents or notices to its end users as mandated by applicable federal or state law. At a minimum, Customer must provide notice to Customer Users at least thirty days prior to the application of Flex Fees. Customer is solely responsible for determining the consumer Flex fee amount as applied to credit card or ACH transactions, in accordance with applicable law. Any such fees are capped at a maximum of three percent (3%) of individual transaction values chargeable to the consumer. Discount rate increases due to changes in card brand / card network rules could apply upon thirty days advance notice to Customer. Customer agrees that within fourteen (14) days of the Effective Date, the Customer shall, if it has not already, sign one or more change forms with a Company-approved third-party vendor memorializing the Flex Fee Service.

### 8. Terms and Conditions of Transaction Processing

- a. **Customer's Obligations for Transaction Processing.** Customer is solely responsible for obtaining authorization from any Card Holder to perform transactions. Customer is solely responsible for the accuracy and completeness of all data provided by Customer or its Customer Users or Card Holders. Customer acknowledges and agrees that: (a) any transactions are between Customer and Card Holder; (b) Company is a third-party service provider and payment facilitator for Customer, and not a party to any transaction; (c) Company is not a buyer or seller in connection with any transaction; (d) Company 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 Company is not a party to and will not be responsible for any such disputes.
- b. **Transaction Processing Services.** Company will collect and relay payment information provided by Customer to process the transactions on behalf of Customer using the appropriate networks. Company, through Payment Processing or a third-party provider, will establish a credit card or electronic funds transfer transaction gateway to the designated merchant account to provide payment processing services to Customer. Customer acknowledges and agrees that Company or the third-party provider, as applicable, may 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 Processing Service, the provider or Company 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 Services provided by Company and any relevant operating rules such as those imposed by the National Automated Clearing House Association and all related guidelines as they may be amended from time to time or any relevant card brand / card network rules. Customer shall maintain valid merchant processing agreements, including for Payment Processing, if selected in the Order Form, with providers approved by Company during the Term of this Agreement. Customer acknowledges that Company 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, Company 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 Company is unable to rectify such situation, including by reverting to previously acceptable terms. The foregoing does not grant Customer any rights of termination with respect to any third-party agreements which may be entered into by Customer. In exchange for use of the payment gateway, Customer will pay all transaction fees listed in the relevant Order Form(s) regardless of whether Customer is also using the Company Payment Processing service.



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- c. **Data Transmission.** Customer acknowledges that Company is not a financial or credit reporting institution. Company 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 / Data Security.** Company adheres to Payment Card Industry Data Security Standards. Customer agrees to adhere with such requirements with respect to any handling of cardholder data. Customer shall be solely responsible for all liability related to the handling of Card Holder data by Customer or Customer Users. Company reserves the right to temporarily suspend access to the Services to minimize threats to the security and to protect operational stability and security of the Services. Company does not guarantee the security of the Services and will not be responsible for any infiltration of its security systems so long as Company has used commercially reasonable efforts to prevent such infiltration. In no event will Company be liable for transaction processing or other services performed by any third-party.

### 9. Termination / Suspension

This Agreement may be terminated and/or suspended as follows:

- a. **Upon Termination of Merchant Processing Agreements(s).** In the event that one or more of Customer's MPAs, including any agreement(s) for Payment Services, is terminated with the credit card or EFT payment processor utilized in connection with this Agreement, Company may, in Company'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.** Company reserves the right to immediately terminate Customer's use of the Services, if Company, in its sole discretion, determines that Customer's use of the Services is unlawful or if Customer transmits any Prohibited Materials.
- c. **Termination for Insolvency.** This Agreement shall be deemed terminated immediately if 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, Company 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 Company 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, Company, 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 Company) prior to the expiration date of any Term, Customer shall be obligated to pay to Company 100% of the fees that Company would have received if this Agreement had remained in effect until its scheduled expiration date, less the aggregate amount of the license and maintenance



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fees actually paid by Customer to Company during the then current Term, plus any additional accrued fees and costs at Company's then current rates. Company will calculate early termination fees by multiplying any fixed amounts by the number of months remaining in the then-current Term. Company will calculate early termination fees of usage-based products by taking the average monthly fee charged during the immediately preceding six (6) month period, normalized for regular usage, and multiplying by the number of months remaining in the then-current Term. Such fees shall be paid within thirty (30) days before the effective date of termination and prior to any release of Customer data from Company Service. Customer agrees that (a) a breach by Customer under this Agreement is a breach under all other agreements between Customer and Company, and a breach by Customer under any other agreement between Company and Customer is a breach of this Agreement, and (b) all other agreements between Customer and Company are amended to include this provision. If Customer is currently utilizing the payment processing service, Customer further agrees that repeated failure to process a substantial portion of Customer's processing volume through the service will constitute a sufficient and independent basis for a breach of contract.

- e. **Suspension of Services.** Company may suspend Customer's access to the Services immediately, without notice and, where circumstances do not allow, without providing Customer with an opportunity to cure, if Company reasonably determines that: (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) Company believes a security breach compromises the security of the payment processing services; (iv) Company 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 and does not cure such failure within thirty (30) days; (vii) Customer refuses to upgrade to the most current software version, security updates and/or patches; (viii) Customer, or any Customer User, is utilizing the Services for illegal or fraudulent activities; or (ix) Customer fails to materially comply with this Agreement and does not cure such failure within ten (10) days. The obligation to pay 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 Company. If any amount owed by Customer under this Agreement or any other agreement with Company is sixty (60) or more days overdue, Company may, without limiting Company 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 Company's Services to Customer until such amounts are paid in full. If Customer believes that any amount has been billed in error, you must provide written notice to Company within forty-five (45) days after receipt of the relevant invoice(s) specifying the nature of the perceived error. Customer waives the right to dispute any fees or charges after such forty-five (45) day dispute period.

### 10. Customer Responsibilities / Compliance with Law

- a. **Authorized Representatives.** Customer agrees that it will only allow its Customer Users 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 international, federal, state, provincial, or local 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, intellectual property laws, financial services laws and regulations, communications laws and regulations, and all relevant state and federal privacy and/or data security laws. Customer shall not permit any third-party to access or use the Services in, or export the Services to, a country subject to a United States embargo. 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



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or obscene material or trade secrets.

CUSTOMER AGREES NOT TO POST OR TRANSMIT ANY PROHIBITED MATERIAL OR TO ALLOW ANY CUSTOMER USER TO DO THE SAME. Company reserves the right to terminate Customer's use of Services, if Company, in its sole discretion, determines that Customer's use of Services is in violation of this Agreement, unlawful, materially deceptive, libelous, defamatory, harmful to minors, or after reasonable opportunity to cure, is inclusive of Prohibited Material. Notwithstanding the above, Company 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 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 CAN-SPAM Act (USA), the Telephone Consumer Protection Act of 1997 (USA), or similar law, or all Canadian Radio-television and Telecommunications Commission (CRTC) regulations (Canada).

- c. **Compliance with Privacy and Data Security Laws.** Customer will comply with all applicable international, federal, state, provincial, and local laws, rules, regulations, and other requirements with respect to privacy, data protection, confidentiality or security of Personal Information. In providing the Services, Customer shall provide Company with such cooperation, assistance, and information, and execute all documents as Company may reasonably request, to enable Company to comply with its obligations under applicable law. Customer further agrees not to use the Services to collect, manage, or process Personal Information, except with permission and to the limited extent required for the provision of services to Customer's customers. Customer further agrees that prior to collecting, managing or processing any information regarding minor children, as defined under applicable law, Customer must obtain the consent of the holder of parental responsibility over the child. Customer represents and warrants that for Personal Information that Customer discloses to Company, or that is included in the Customer Data, Customer will comply with all laws, regulations, rules, Federal Trade Commission guidelines, and other publicly known industry best practices regarding the collection, disclosure, and use of any Personal Information, which may require Customer to provide customers and consumers with privacy notices and choices (for example, opt-outs regarding certain data sharing); and, that Customer will obtain all required consents from customers and consumers, and that Customer will also disclose to Company any required consents related to Company's use of that Personal Information or biometric data under this Agreement. If Customer receives any "right to know" deletion or "right to be forgotten," or similar requests related to Personal Information within Customer Data, Company will follow Customer's written instructions for the handling of such requests, subject always to compliance with applicable laws. Company will not generally communicate directly with the consumer regarding any such requests. Customer agrees not to utilize the Services to store any protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996.
- d. **Privacy Notice.** Customer will provide notice, where required by law, informing Customer Users and Customer's end users to whom the Customer Data (as defined below) relates about Company's collection, use, storage or other processing of Customer Data.

### 11. Title to Products and Services

All title to equipment and software licenses provided by Company for performing the Services are the property of Company or its licensors and remain the property of Company 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 Company with Feedback, Company or its licensors (as



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appropriate) shall own all right, title and interest in and to such Feedback. Customer hereby grants Company a perpetual, irrevocable, worldwide license to use any Feedback, without compensation, and makes all assignments necessary to achieve such ownership of any such Feedback, including without limitation the right to exploit Feedback in any and every way, as well as the right to grant sublicenses under copy right, patent, and any other form of intellectual property.

Any User Contributions are non-confidential and non-proprietary to Customer. Customer grants Company the perpetual right to use, reproduce, modify, perform, display, distribute, make derivative works of, and otherwise disclose User Contributions to third parties for any purpose. Customer also grants Company and its third-party providers the right to use Feedback and User Contributions to improve the Services, and to improve Company's overall product offerings and business model. Customer represents and warrants that Customer owns all rights in and to the User Contributions and has the rights necessary to grant the license granted above, and that all User Contributions will comply with this Agreement.

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 Company; (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 Company, Customer agrees to access the Services only through the interface that is provided by Company 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 Company 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 hereby grants to Company and its subcontractors or agents, an irrevocable assignable, sublicensable, worldwide license to use Customer's information, including Customer Data, in furtherance of this Agreement, and for non-identifiable, aggregate reporting for all Company clients, and Customer agrees that any aggregate non-identifiable information or data compiled or collected by Company shall be Derivative Data under this Agreement. Customer acknowledges that Customer Data shall not include any data obtained by Company through means other than direct use of the Services by an end user. Customer Data is processed in accordance with Company's Data Processing Policies which are outlined in Company's Data Processing Addendum found at <https://www.daxko.com/data-processing-addendum> Customer is solely responsible for resolving disputes regarding ownership or access to Customer Data, or interests in Customer's database, or any Personal Information housed in the Database, including those involving any current or former owners, co-owners, employees, affiliates (former or current), or contractors of Customer. Customer acknowledges and agrees that Company has no obligation whatsoever to resolve or intervene in such disputes.

Customer acknowledges that Company is under no obligation to retain or archive Customer Data following termination of this Agreement for any reason. Company will remove Customer Data from its servers, without backup, in accordance with Company policy, except where circumstances warrant retention of Customer Data beyond such period, as determined in Company's reasonable discretion, or as may be required by law.

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 Company 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, the government's (and any





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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 Company and all rights are reserved under the copyright laws of the United States; (b) If the Customer is part of the Department of Defense, Company Technology 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).

Customer hereby acknowledges and agrees that Company Technology, websites and all content, features, and functionality (including but not limited to all information, software, text, displays, images, video, audio, and the design, selection, and arrangement thereof) constitute valuable IP Rights of Company, including, but not limited to, copyrights and trade secrets, and that except for the rights of use, modification, and copying expressly granted to Customer herein, Company now holds and shall retain all rights, title, and interest to the Services, as well the Trademarks, and any documentation with respect thereto. Company owns and retains title to all intellectual property rights, including, without limitation, copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other similar property rights ("IP Rights") with respect thereto. Upon termination of this Agreement, Customer shall retain no rights of any nature with respect to the software or the Trademarks. Customer shall not cause or allow the Trademarks to be associated with any product other than the software and shall not (during the term of this Agreement or at any time thereafter) create, copy, reproduce, use, distribute, promote, sell, or sub-license any product (other than as expressly authorized herein) bearing the Trademarks or any name confusingly similar thereto. Company may, at its own discretion and at its expense, take any steps necessary and proper to protect and preserve its rights and interests in the software and component parts thereof. At Company's request and Company's sole expense, Customer shall use reasonable efforts to assist Company in protecting such rights and interests.

Company or its licensors own and retain all their proprietary rights in the Database and Data Access. Customer acknowledges that Company and its licensors have spent, and continue to spend, considerable time and resources on the selection and arrangement of the Database and the Data Access as original intellectual creation, and accordingly, Company 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 Company and its licensors. The 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 Company 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 Company 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, or in any other way allow third parties to exploit Company Technology.

### 12. Trademark and Domain Rights

Customer grants to Company 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 Company 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.



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### 13. Treatment of Confidential Information

Confidential Information may be shared under this Agreement. 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. Except with respect to Personal Information, 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. 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, provided that the Receiving Party shall first make commercially reasonable efforts to provide the Disclosing Party with (a) prompt written notice of 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. In addition, Company may use third-party service providers in providing the Company's services. Company may share confidential information of Customer with these service providers so long as a confidentiality agreement is in place to maintain confidentiality. As between Company and Customer: (i) Company shall own all Company 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, Company shall not have any right, title, or interest therein.

### 14. API Service

Company may, if indicated in the Order Form, provide Customer with access to the API Services for either purpose of internal Customer use or for third-party integrations via the Exchange API. Customer may not distribute, grant rights of access, or otherwise make the API Service available to any third-party, except as permitted by this Agreement or with the prior written permission of Company. Prohibited activities include but are not limited to: a) use or access the API Service for purposes of monitoring the availability, performance, or functionality of any of Company's products and services or for any other benchmarking or competitive purposes; b) use of Company trademarks in a manner that creates a sense of endorsement, sponsorship, or false association with Company; c) replication of Company's core user experience, including functionality found in its products and services or other trade dress or trademark infringement; d) posting or hosting of any objectionable materials as determined in Company's reasonable discretion; e) use of the services in a way that is deceptive or misleading; f) replicate, frame, or mirror the Company's website, Company's products, or Company's designs; g) creation of spam or mass, unsolicited communications; h) publication of malicious, unlawful, or obscene content. Replicate, frame, or mirror the Company website, Company's products, or Company's design. Notwithstanding the foregoing, the two types of API service are more specifically governed in accordance with the following:

**a. API Service (Customer Internal Use).** Customer's use of the API Service shall be limited to Customer's Users and its Vendors. Notwithstanding the foregoing, Company reserves the right to deny access to the API Service to any third-party who Company reasonably determines to be engaged in business activities generally competitive with Company or who is otherwise providing a service that is objectionable, or that transmits Prohibited Material. Unauthorized use of the API Service is strictly prohibited.

**b. API Service (Daxko Exchange / Third-Party Integrations)**



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- i. **Customer Data Access Request Form.** To grant access to Customer Data to a third-party, through the API Service, at Customer's request, Customer must execute an Access Authorization Form authorizing Company to provide such access to an Vendor. Company will only provide such Customer requested access to Vendors.
- ii. **Privacy Notice.** Customer shall be responsible for informing Customer Users to whom the Customer Data relates, where required by law, about Company or Vendor's collection, use, storage or other processing of Customer Data.
- iii. **Termination of Access.** Customer acknowledges that it has the affirmative obligation to immediately inform Company if it seeks to revoke Vendor's access to its Customer Data, including if Customer terminates its relationship with Vendor. Customer acknowledges that informing Company that it seeks to revoke Vendor's access to Customer Data or termination of its relationship with a third-party is essential to end the flow of data via the API Service between Company and Vendor with respect to the Customer Data.
- iv. **Revocation of Access.** If Company reasonably believes that Vendor's access to Customer Data through the API Service is likely to cause harm or damage to the API Service, Company may immediately revoke Vendor's access. Customer acknowledges that Company may filter, alter, limit or otherwise restrict Customer's or Vendor's queries and results, and databases included, with respect to access through the API Service.
- v. **Security Breach.** Customer agrees that in the event of a Security Breach, Vendor, and not Company, shall be responsible for containing such Security Breach, mitigating potential risks to affected individuals and notifying affected individuals and regulatory authorities of the Security Breach where required by law. Vendor shall be solely responsible for all costs or expenses associated with any remedial actions or notifications
- vi. **Release.** Customer hereby expressly releases Company and its affiliates, and their respective officers, directors, employees, consultants, subcontractors and agents from any claims, demands, damages, causes of action, suits or liability for any losses or damages (either to Customer or Vendor) of any kind, whatsoever, that may arise in connection with the access, use (or misuse), handling, receipt, disclosure, or storage of data by any Vendor whom Customer authorizes Company to provide access to Customer Data through the API Service.

### 15. Warranties, Disclaimers, Limitations of Liability

#### a. Company warrants that:

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

**EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE IMMEDIATELY**



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PRECEDING SENTENCE, COMPANY PROVIDES, AND CUSTOMER ACCEPTS, THE SERVICES IN “AS-IS” CONDITION; AND COMPANY 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 COMPANY 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. COMPANY SHALL HAVE NO LIABILITY ARISING FROM CARD HOLDER DATA TRANSMISSION WHICH OCCURS PRIOR TO ENCRYPTION AND RECEIPT BY SERVERS OWNED OR CONTROLLED BY COMPANY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTIFY THEFT, OR INVASION OF PRIVACY BY ANY THIRD-PARTY. COMPANY 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. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OR 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 COMPANY’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 COMPANY AND ITS AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS.

- b. In the event of any default by Company 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 Company. 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 Company pursuant to the notification requirement of this Agreement. Such written notification must be provided to Company 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.
- c. Certain portions of the Services provided under the Agreement may be provided by third-party service providers. Customer acknowledges that in order to receive such third-party services Customer may



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be required to agree to separate and additional terms and conditions with such third-party service providers and that Company is not responsible for the services or products of such third parties.

- d. Customer may link to any website associated with the Company or used as a part of the Services, provided it is done in a fair and legal manner that does not damage Company reputation or image, or take advantage of it in any way, but Customer must NOT establish a link in such a way as to suggest any form of association, approval, or endorsement on Company's part without Company's prior express written consent.
- e. Any links on any site to any sites or resources provided by third parties are provided for convenience only, such as links contained in advertisements, banner ads and sponsored links. Company has not reviewed all the sites linked to any websites and has no responsibility for them or any loss or damage that may arise in from Customer's use of them. Customer accesses and uses any third-party websites or links at Customer's own risk and subject to the terms and conditions of such websites.

### 16. Indemnification

Except as provided below, Customer agrees to defend, indemnify, and hold harmless Company and its directors, members, officers, employees, licensors, subcontractors, and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including attorneys' fees, arising from: (i) Customer's failure to use Services as permitted under this Agreement; (ii) from any violation or breach of this Agreement by Customer; (iii) any action or inaction of Vendor to whom Customer grants access to the API Service related to Vendor's access, use, handling, receipt, disclosure or storage of Customer Data; (iv) any dispute between Customer and another party regarding ownership of or access to Customer Data, including without limitation any disputes between Customer franchisors and franchisees; (v) any action related to Customer's use of the Services in violation of the rights of third-parties or any applicable laws or regulations, and (v) any failure of Vendor or Customer to comply with state or federal regulations related to privacy, data protection, Vendor or confidentiality or security of Personal Information; in each such case, provided that Company (a) gives Customer written notice of any such claim within fifteen (15) days of Company'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, Company 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 Company written notice of any such claim within fifteen (15) days of Customer's receipt of such claim, (b) permits Company to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provides Company all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim.

If the Services becomes, or in Company's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Company 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 Company is unable to provide one of the remedies in (i) or (ii) within forty-five (45) days of notice of the claim, Company shall have the right to terminate this Agreement.

Notwithstanding the foregoing, Company 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





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the Services by Customer or Vendors not approved by Company, (ii) any combination or use of the Services with products or services not supplied by Company or approved in writing by Company 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 Company and its directors, members, officers, employees, subcontractors, and agents, from and against 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 Company with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights by the Services or any part thereof. Customer will immediately inform Company as soon as Customer becomes aware of any threatened or actual liability claim by a third-party relating to the Services.

### 17. Notices

Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by either Party pursuant to the terms of this Agreement shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, (c) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), or (d) upon confirmation of receipt by email, in each case, addressed to the Party at such Party's address as set forth on the Order Form or as subsequently modified by written notice. Any notices to Company must be delivered to Daxko, LLC, 600 University Park Place, Suite 500, Birmingham, Alabama, 35209, Attn: Legal Department with an electronic copy to [legal@daxko.com](mailto:legal@daxko.com).

### 18. Sunset Policy

Notwithstanding anything otherwise stated in this Agreement, the Services are subject to Company's Sunset Policy and Company reserves the absolute right to discontinue all support for the Services, or for any features, services or content accessible through the Services, in accordance with the Sunset Policy stated in this subsection. Company focuses on supporting rapidly changing technologies, and on innovating to provide customers with the most stable and useful set of products and services possible, and consequently, products and services may go through major updates or be replaced with newer products.

#### a. Sunset Definitions.

- i. Sunset/Sunsetting or End of Life (EOL) refers to when Company ceases marketing or offering a particular Licensed Product or a Major Release for a particular Licensed Product. When a Licensed Product is sunsetted, it enters the sunset, or EOL, period. The Sunset or EOL Period starts when the next major version of a product is released—or at such other time when Company announces, in a format of its choosing, to customers that a given product has been discontinued—and ends at the time designated by Company in the EOL or Sunset announcement, which may vary, but shall not in any case extend beyond nine months except as explicitly stated in writing by Company.
- ii. Releases for Licensed Product are categorized as Major Releases or Maintenance Releases.
- iii. Major Release/Version means a new release of the Licensed Product that incorporates the last Maintenance Release(s) (if any) and may include additional enhancements to the Licensed Product.
- iv. Major Releases may include architectural changes and major feature changes, as well as new features and functionality. The terms "Release" and "Version" are used interchangeably in this document.



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- v. **Maintenance Release** means a release of the Licensed Product that provides cumulative patches for a particular Major Release. A Maintenance Release typically does not contain new features or new functionality. Patches are software code updates that resolve specific software deficiencies. These are typically designated as a build number associated with a specific release.
  - vi. **Support Services** are the maintenance support services for Licensed Product. Customers must have a current agreement and be up to date on all amounts due under the agreement to receive Support Services (in accordance with this Policy).
- b. **Full Support.** Company provides full support for Licensed Product for which the customer has a current agreement for the current version of any software or services with all Maintenance Releases applied. For customers with the current major version of the software who have not applied all available patches, support may be limited to configuration assistance, activation assistance, and general questions.
- c. **Sunset Support.** Company provides a more limited level of Support Services for software that is in the Sunset Period. Limited support is provided for customers who have installed all patches available to the Sunset Version. Support services may not be provided if all available fixes have not been installed. If all patches have been installed, the customer shall provide Company with a fully reproducible scenario in which the error occurs. For the first nine (9) months after Sunset is initiated for a product, or as otherwise agreed by Company, in writing, Company may, at its option, provide an additional patch to the Sunset Version or offer a work-around. Partial support will be subject to the availability of resources and may be limited as Company determines. At nine (9) months after Sunset, Company shall cease all support of the Sunset Version or the Licensed Product except as otherwise agreed by Company in writing.
- d. **Contract Commitments.** Notwithstanding any of the foregoing, if any Licensed Products or Versions thereof are scheduled to reach EOL, Company shall not be required to provide additional support if it has offered to Customer a Company-affiliated replacement platform or new version of the Licensed Products with reasonably comparable functionality at similar commercial terms for the remainder of Customer's then-current Term. In the absence of such a replacement platform or new version of Licensed Products such Licensed Products will be supported by Company in accordance with the applicable Order Form and Service Agreement for the remainder of the then-current Term of such agreement.

### 19. General

- a. **Limitation of Action.** Any legal action arising out of Company'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.
- b. **Non-Solicitation / Non-Disparagement.** Neither party to this Agreement will knowingly solicit for employment any then current employee of the other party either directly or indirectly through a third-party during any Term, without the mutual agreement of the parties. Neither party will publicly disparage, call into disrepute, defame, slander, or otherwise criticize the other party or any of their products or services in a manner detrimental to the business, goodwill, or reputation of the other party in the relevant industry.
- c. **Governing Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without reference to (a) any conflicts of law provisions that would apply the substantive laws of another jurisdiction; or (b) the 1980 United Nations Convention on Contracts



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for The International Sale of Goods; or (c) other international law. The parties stipulate to the personal and exclusive jurisdiction of the state and federal courts of that jurisdiction for all cases and controversies arising out of or related to this Agreement.

- d. **Dispute Resolution.** The parties agree that any disputes, except for those for the collection of any fees owed under this Agreement, among them arising from or related to this Agreement, including without limitation claims related to the parties' negotiations and inducements to enter into this Agreement shall be submitted to first to mediation and then, if such mediation is unsuccessful, to mandatory, binding arbitration conducted under the auspices of the American Arbitration Association located in Birmingham, Alabama, USA and then to binding arbitration. The parties shall each be responsible for initial payment of one-half of any mediation or 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 Company 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, Company shall, in addition to any and all other rights and remedies that may be available at law (which Company 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. Judgment on an arbitration award may be entered by any court with competent jurisdiction. This Agreement is subject to the operation of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- e. **No Assignment.** Customer shall not assign any of its rights under this Agreement nor delegate its duties hereunder to another person or entity without the prior written consent of Company, which consent shall not be unreasonably withheld. Any permitted assignment shall be subject to the permitted assignee or transferee agreeing in writing to comply with all the terms and restrictions contained in this Agreement. Any attempted assignment in violation of this Section shall be void. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective trustees, successors, permitted assigns and legal representatives.
- f. **Password Security.** Strong passwords must be used to access all IT services, including any administrative logon. Strong passwords are defined as having more than eight characters. Customer acknowledges that Company may maintain, or use a third-party who maintains, physical and technical security of the servers at a level commensurate with reasonable commercial practices for similar types of information (such as, but not limited to, lock and key, encryption, and blocking and identifying unauthorized access to data).
- g. **Severability.** In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, this Agreement will not fail, but will be deemed amended, to the least extent necessary, to delete the void or unenforceable term or provision, and the remainder of this Agreement will be enforced in accordance with its terms and will not in any way be affected or impaired thereby. If any term or provision of this Agreement is held to be overboard or otherwise unreasonable, the same will not fail, but will be deemed amended only to the extent necessary to render it reasonable, and the Parties agree to be bound by the same as thus amended. In the event of a material conflict between any section this Service Agreement and the provisions of the Order Form, the provisions of the Order Form shall control. In the event of a conflict between this Agreement and any linked terms or referenced agreements, the incorporated terms or referenced agreement shall control over this Agreement and any relevant Order Form strictly as it relates to the impacted Service.



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- h. Changes.** Company reserves the right, in its sole discretion, to make any changes to the Services from time to time that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Company's services to the Customer and/or any Customer Users, (ii) the competitive strength of or market for Company's services, or (iii) the Services' cost efficiency or performance; and/or (b) to comply with applicable law. In addition, upon Customer's request, Company may (in Company's discretion) add or delete some portion of the Services, without requiring a separately signed agreement, provided that such changes do not increase or decrease the total fees under this Agreement outside of the contracted fee increase or materially adversely impact the functionality of the services.
- i. Rights upon Termination.** Upon the expiration or any termination of the Agreement, Customer shall promptly return to Company, or with Company's prior written consent destroy, any information from the Services in Customer's possession or control. If the Agreement is terminated prior to the expiration of the Initial Term or the applicable Renewal Term, Customer shall pay to Company within thirty (30) days before the effective date of such termination an amount as specified in Section 9.d. of this Agreement. Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer's available data in accordance with Company's then-current data export policy following payment of any applicable fees and costs due for the remaining Term at then current standard rates.
- j. Force Majeure.** In no event will Company be liable or responsible to Customer, or be deemed to have defaulted under or breached the Agreement any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, pandemic, epidemic, quarantine, embargoes or blockades in effect on or after the date of the Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law, rules, regulations or orders, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.
- k. No Third-Party Beneficiaries.** Except as expressly provided, the Agreement is for the sole benefit of the parties to this Agreement and nothing herein expressed or implied will give or be construed to give to any person, other than the parties, any legal or equitable rights hereunder.
- l. Setoff.** All amounts payable to Company under the Agreement shall be paid by Customer to Company in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).
- m. Monitoring.** Company may monitor Customer's and Customer User's use of and access to the Software or Services to ensure compliance with the Agreement and any other applicable rules, policies, deadlines and instructions. By using the Software or Service, each of Customer and Customer User expressly consents to such monitoring.
- n. Collection and Use of Personal Information.** Each of Customer and Customer User acknowledges that when such party download, install or use the Software or Service, or access Company's website, Company may use automatic means (including, for example, cookies and web beacons) to collect information about Customer User's device and about Customer User's use of the Software, Service, or website. Customer and Customer User also may be required to provide certain information about Customer User as a condition to downloading, installing or using the Software, Service or website, or certain of its features or functionality. All information we collect through or in connection with this such



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usage is subject to Company's Privacy Policy. Without limitation Customer acknowledges and agrees that Company may process Personal Information for the purpose of providing the Services and reasonably related functions such as billing and Customer or Customer User support, as well as for product or service improvement and reporting. By downloading, installing, using and providing information to or through Company's applications, Services, or websites, Customer User's consent to all actions taken by us with respect to Customer User's Personal Information in compliance with the Privacy Policy. Customer represents and warrants that it is entitled to process Personal Information or biometric data and make such information available to Company for processing. Further Customer and Customer Users each consent to use of Personal Information for the purpose of direct marketing communications about Company products or services as well as adjacent products and services through Company's third-party partners.

- o. No Waiver.** The rights and remedies provided by the Agreement are cumulative. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder.
- p. Construction.** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- q. Survival.** Provisions that, by their nature, implicate post termination obligations to Customer will survive any termination and/or conclusion of this Agreement including sections pertaining to Intellectual Property Rights, Confidential Information, Payment, to the extent that any amounts are still owed, Termination, Waivers and Disclaimers of Warranties, Limitation of Liability, and Indemnification, and relevant General Provisions.
- r. Exclusivity.** During the Term, Customer agrees that Company 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 from another provider of the Services during the Term for the provision of Services to such additional locations, sites, or facilities not presently covered by this Agreement.

### 20. Third-Party Offerings

The Services may allow Customer to access or use Third-Party Offerings. The availability of any Third-Party Offerings through the Services does not imply Company's endorsement of or affiliation with the third-party provider. Company does not control Third-Party Offerings and will have no liability to Customer or affiliates of Customer in connection with any Third-Party Offerings for which Customer elects to engage. Company has no obligation to monitor or maintain Third-Party Offerings and may disable or restrict access to any Third-Party Offerings at any time. By using or enabling any Third-Party Offering, Customer expressly permitting Company to disclose Customer Data or other information to the extent necessary to utilize the Third-Party Offering. Customer's use of Third-Party Offerings is at its own risk and may be subject to any additional terms, conditions and policies applicable to such Third-Party Offerings (such as terms of service or privacy policies of the providers of such Third-Party Offerings). If Customer pauses or deletes some or all of the features or functionality, certain aspects exchanged under Third-Party Offerings such as phone numbers or emails may not be retrievable upon reactivation. If Customer's account is paused for more than thirty (30) days, and Company or the third-party provider is incurring costs on behalf of Customer related to the Third-Party Offerings (such as the cost of securing a particular phone number on Your behalf), such phone number may be released, or some or all Customer's account may be deleted, in Company's discretion, without liability. Company disclaims all liability related to any outages or downtime of Third-Party Offerings. Company is not responsible for any content provided by third parties. Customer is responsible for ensuring that Customer's engagement or transactions with any content provided by third parties complies with this Agreement and any





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applicable laws. To the extent that Customer provides any content to Company, Customer represents and warrants that Customer owns or controls all rights in and to all content provided to Company, including, but not limited to, any code provided to customize the Services. Customer represents and warrants that it has provided, and will continue to provide, adequate notices and has obtained, and will continue to obtain, the necessary permissions and consents to provide Customer Data (and any Customer User's data) to Company for use and disclosure in accordance with the terms of this Agreement and all policies incorporated herein by reference. If Customer's use of Third-Party Offerings is determined in Company's reasonable discretion to be excessive, abusive, or to have a negative effect on the Third-Party Offerings, Company may require Customer to upgrade the Services to meet Customer's activity levels, or Company may suspend or terminate Customer's use of the Third-Party Offerings or may reduce the amount of data Customer is able to use.

### 21. Terms Specific to Mobile Service

- a. **No Implied License; Limitations on Use.** Customer acknowledges and agrees that this Agreement in no way shall be construed to provide to Customer any express or implied license to copy, reproduce, use, sell, distribute, prepare saleable derivative works based upon or sublicense Company Technology or Admin Website other than as expressly set forth herein or in Customer's Order Form. Customer expressly agrees not to take any of the foregoing actions or permit any of the foregoing actions to be taken by anyone who has access to Company Technology or Admin Website. The Software and Admin Website shall be used solely in connection with Customer's business. Customer shall not use or permit or allow the use of Company Technology or Admin Website or any portion thereof in any other manner without the written consent of Company, which consent may be withheld at Company's sole and absolute discretion, nor shall Customer decompile, translate, reproduce, reengineer, or reverse engineer Company Technology, Admin Website, or any part thereof, or otherwise attempt to derive the source code for any part thereof.
- b. **Postings to Admin Website.** Company shall in no event be responsible or liable for any Customer Content. Customer shall at all times retain all right and title to Customer Content, and no right, title, or interest in any Customer Content is transferred to Company. Customer shall defend, hold Company harmless from, and indemnify Company against any and all third-party claims, causes of action, damages, costs, fines, penalties, and expenses of any kind, including, without limitation, reasonable attorneys' fees, arising out of or relating to any Customer Content posted upon the Admin Website by Customer or any person using Customer's access to the Admin Website, provided that such Loss is the not the result of Company's modification of such Customer Content or failure to remove or uncache such Customer Content upon Customer request.
- c. **Development.** Customer has requested that Company develop and make Company Technology and Admin Website available to Customer via the Apple platform. Customer acknowledges that such service is contingent upon Customer opening and maintaining an Apple Developer Account. Customer acknowledges that it is solely responsible for direct payment to Apple for all annual or monthly fees associated with opening and maintaining an Apple Developer Account. Company shall make available for download Company Technology to License and Customer's end users. Company shall make and attempt to make Company Technology available at iPhone and Android mobile phone application stores so that Customer's end users may download it from such vendors; provided, however, downloading Company Technology from such store shall be subject to any terms, conditions, and restrictions imposed by such vendor. Company shall not be liable for any election by any vendor not to offer or carry Company Technology or for any failure by any vendor, temporary or permanent, to offer Company Technology for sale or other acquisition to Customer or to Customer's end users. Customer shall be directly responsible for paying to Apple during the Term of this Agreement any Apple Developer Account fees.



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- d. **Mobile Privacy Policy Incorporated.** Customer acknowledges that Company's Mobile Terms of Use govern all end users of the Company mobile app, which terms may be found at: <https://www.daxko.com/mobile-app-terms-of-use.com>.

### 22. Terms Specific to Database Service or Vault

The Database Service is comprised of the Database. Company will provide Customer with a means of 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 this Agreement. Customer has been granted the Data Access and to use, and allow Customer's employees and Vendors to use Database and Data Access only for Customer's Internal business purposes at Customer's business locations. Notwithstanding the foregoing, Company reserves the right to deny access to the Database and Data Access to any third-party contractor or subcontractor who Company reasonably determines to be engaged in business activities generally competitive with Company or Company'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 Vendors, and shall ensure their compliance with this Agreement. Customer's use of, or failure to use, the Database or Data Access is at Customer's sole risk. Customer acknowledges and agrees that Company is not responsible for any data provided in the Database or Data Access. By purchasing the Service, Customer acknowledges that Company 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. Company may suspend or terminate Customer's access to the Data, Database or Data Access if Customer allows third-party access to the Data or Database or Data Access without express, prior, written consent of Company. Company reserves the right to remove any Data or Database from the Data Access at any time.

### 23. Terms Specific to Payment Processing (These services may be subject to a separate, controlling agreement)

- a. **Launch of Payment Processing.** Customer agrees that within fifteen (15) days of the Effective Date of Customer's Order for Payment Processing, the Customer shall, if it has not already, enter into one or more valid MPA (one MPA for each merchant account is required) with a Company-approved third-party service provider, and Customer agrees to launch Payment Processing within thirty (30) days after Customer's account approval pursuant to one or more of the MPAs, or by such other date as is mutually agreed upon. For the sake of clarity, Company shall have no obligation to provide payment processing to Customer until such time as Customer has met its obligation to enter the MPAs with a Company-approved service provider.
- b. **Pricing:** Customer agrees that the initial pricing for Payment Processing under this Agreement will be as set forth in the Customer's MPAs, which initial pricing will be as provided in Exhibit B of the Order Form (or such pricing which is otherwise agreed to in the MPAs). Additionally, prior to the launch of the Services (if Services are not already launched), Customer may also choose to purchase credit card terminals subject to separate payment and invoicing. All such fees and costs are subject to price increases in accordance with the terms of the MPA. In the event of a conflict between this section and any MPA, the provisions of the MPA shall control. If Customer fails to launch Payment Processing or



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cancels Payment Processing prior to the end of the Term, the fees are subject to alternative pricing in Company's sole discretion.

- c. **Company not a Credit Reporting Institution.** Customer acknowledges that Company is not a financial or credit reporting institution. Company 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. Company is not a party to, and shall not be responsible for the resolution of, any dispute between Customer and a purchaser of Customer's goods or services
- d. **Limitations of Liability.** Customer agrees that the disclaimers, exclusions, and limitations of remedies, liability and damages provisions set forth in the MPA are incorporated by reference and shall apply to the Services provided by Company hereunder, the same as if those provisions were stated herein, with Company liability hereunder limited to the full extent allowed by such provisions.
- e. **Processor Approval.** Should any third-party payment processor fail to approve the Customer's merchant processing application, Company may, in its sole discretion, terminate all or a portion of this Agreement upon written notice to Customer or may reprice Customer's monthly software fees in Company's reasonable discretion.

### 24. Digital Millennium Copyright Act

Company has in place certain legally mandated procedures pursuant to the Digital Millennium Copyright Act regarding allegations of copyright infringement. Company reserves the right in its sole discretion to immediately suspend and/or terminate access to the Service by any user who is alleged to have infringed on the intellectual property rights of Company or of a third-party, or otherwise violated any intellectual property laws or regulations. Company's policy is to investigate any allegations of copyright infringement brought to its attention. If Customer has evidence, know, or have a good faith belief that Customer rights or the rights of a third-party have been violated and Customer wants Company to delete, edit, or disable the material in question, Customer must provide Company with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Company to locate the material; (d) information reasonably sufficient to permit Company to contact Customer, such as an address, telephone number, and if available, an electronic mail address at which Customer may be contacted; (e) a statement that Customer has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that Customer is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, Customer must provide it to Company's agent for copyright issues relating to the Service at 600 University Park Place, Suite 500, Birmingham, Alabama 35209 and to [legal@daxko.com](mailto:legal@daxko.com) or call (857)597-1740. If Customer believe that any content that was submitted through the Service and was removed (or to which access was disabled) is not infringing, or that Customer has the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use such content, Customer may send a counter-notice containing the following information to Company's agent for copyright issues: (a) Contact's physical or electronic signature; (b) identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled; (c) a statement that Customer has a good



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faith belief that the content was removed or disabled as a result of mistake or misidentification; and (d) a contact name, address, telephone number, and email address, a statement that Customer consents to the jurisdiction of the appropriate federal court in Birmingham, Alabama, and a statement that Customer will accept service of process from the person who provided notification of the alleged infringement. If a counter-notice is received by Company's agent for copyright issues, Company may send a copy of the counter-notice to the original complaining party informing that person that Company may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Company's sole discretion.

### **25. Terms Specific to Communication Services / SMS / Text Messaging Services**

Company automates MMS/SMS text message, phone, and/or email communications for the provision of general business communications by Customer. Customer is solely responsible for ensuring that the recipients of those communications have provided prior express written consent to receive them. The prior express written consent must identify that Customer may be sending text, phone, and/or email messages, as applicable, related to the Services using automated technology and that the recipient affirmatively agrees to receive such messages. The prior express consent must include the recipient written or electronic acceptance. Specifically, by entering a cell phone number in connection with the Services and not opting such cell phone out of the Company text message feature, Customer is directing Company to automatically send text message reminders and other communications to such cell phone and certifying that the user of such cell phone consents to the receipt of those messages.

At a minimum, the SMS service must include a feature allowing consumers to text "STOP" to unsubscribe and such message must be followed with a confirmation. A consumer may sign up in the same manner to begin receiving messages again. The service will include a feature allowing consumers to reply with the keyword "HELP" to receive assistance at Customer's designated support email address or phone number. Customer will include a conspicuous link to its privacy policy. The service will include a disclaimer that all message and data rates will apply. Consumer may contact their wireless provider with any questions about applicable text or data plans. Carriers are not liable for any delayed or undelivered messages. Message frequency may vary.

Customer is responsible for all liability for any failure to receive consent or failure to opt users out of the text message feature. Services may also include inbound/outbound call capabilities. Customer agrees that any such calls may not be through use of an auto-dialer. The Services may also include email services. Customer agrees to timely process any opt-out requests received in connection with such Services. Additionally, Customer may not attempt to spoof sender domains, send spam or other offending text message practices. Company makes no expressed or implied warranty of individual message receipt. Company shall not be liable for any issues that arise associated with the content that Customer provides or unforeseen liabilities of it being delivered. Customer shall be solely liable to comply with applicable laws and regulations within Customer's jurisdiction in connection with telecommunication (e.g., email and text) messages that Customer sends to the Customer Users. Company is not responsible for Customer's compliance with the laws and does not represent that the Services or use thereof will comply with any laws. Company does not originate, send, or deliver any communications to any recipient via SMS, MMS, email, or other communication method, as Customer controls the message, timing, sending, fraud prevention, and call blocking, and all communications, whether SMS, MMS, email, voice or otherwise, are created by and initiated by Customer or Customer Users, whether generated by Customer or sent automatically via the Services at Customer's direction. Without limiting the generality of the foregoing, Customer agrees that it is solely responsible for complying with all anti-spam laws and regulations, including, without limitation the Telephone Consumer Protection Act and the CAN-SPAM Act. Customer is solely responsible for properly documenting all consents and consumer opt-out requests and shall indemnify and hold Company harmless from and against any claims brought by a consumer regarding failure to obtain proper consent or failure to process any requests to suspend communications to a consumer.



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Customer recognizes that Company may use automatic means including, for example, cookies and web beacons, to collect information about a Customer User's mobile device and about a Customer User's use of the Services. Customer further acknowledge and agree that Company may access or disclose Customer Data, including the content of communications stored on Company systems, if: (i) Company believes that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or government request, (ii) to enforce Company agreements and policies, (iii) to protect the security or integrity of the Services and products of Company, (iv) to protect Company, our other customers, or the public from harm or illegal activities, or (v) to respond to an emergency. Company reserves the right to reclaim any phone number from Customer's account and return that number to the relevant numbering plan if Customer does not send sufficient traffic over that phone number such that the phone number is unutilized or underutilized, as defined by any local, federal, and/or national regulatory agency and/or governmental organization with oversight over the relevant phone number and numbering plan. If Company seeks to reclaim a phone number from Customer's account, excluding suspended and trial accounts, Company will send Customer an email at least two (2) weeks in advance telling Customer that it is reclaiming the phone number, unless Company is otherwise prevented from doing so by the applicable regulatory agency or governmental organization. Company also reserves the right to reclaim phone numbers from accounts suspended for failure to pay or suspended for suspected fraud, and to reclaim phone numbers in free trial accounts that are un-utilized for more than thirty (30) days.

### 26. Terms Specific to Digital and Demand Services

If the Order Form includes any combination of Digital and Demand Services, which may include all or part of Website, Digital Marketing, or Search Engine Optimization as specified in the Order Form, in addition to the Service Agreement, expressly incorporates by reference the Digital Services Addendum available at <https://www.daxko.com/digital-addendum>. Customer agrees to pay the fees as stated in Exhibit B and in accordance with the feature sets listed for the packaged referenced in Exhibit B and as set forth in the Digital Services Addendum.

### 27. Terms Specific to Revenue Recovery Service

If the Order Form includes the Revenue Recovery Service, then this agreement expressly incorporates by reference the Revenue Recovery Addendum available at [www.daxko.com/fsb-terms](http://www.daxko.com/fsb-terms).

### 28. Terms Specific to RSO Screening

- a. **Incorporated Terms.** The third-party Raptor Batch Screening Tool is granted solely pursuant to and in accordance with the separate terms and conditions of this Agreement, which shall include the terms of service found at <http://www.daxko.com/raptorterms> (which is incorporated by reference). The Customer hereby confirms that it has read and agrees to the additional terms referenced.
- b. **Company is not a Credit Reporting Agency:** Customer acknowledges that the information supplied by Raptor via Company's portal is without representation or warrant as to whether a particular match is a particular individual. Customer acknowledges that it has an affirmative obligation to review primary sources to validate, with maximum possible accuracy, if a returned record, in fact, matches the subject individual. Customer further acknowledges that it has the sole responsibility and obligation to confirm a positive match with a subject individual. Such a determination may trigger certain affirmative obligations under the Fair Credit Reporting Act and state analogs such as issuing adverse action letters to impacted individuals. Customer also may have an affirmative obligation to process and resolve third-party disputes related to the accuracy of its determinations. Customer represents and warrants to Company that it maintains a program that is compliant with federal and state credit reporting laws and regulations. Customer acknowledges and agrees that Company and Raptor are merely providers of raw data and are not credit reporting agencies. During its use of the Services, Customer agrees to assume all compliance obligations with regard to state and federal credit reporting laws and regulations.





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### 29. Terms Specific to Facility Access Products (Brivo)

If indicated on Customer's Order Form, Company may supply facility access services Web-hosted security management system offered by Brivo. This service consists of certain equipment and services provided by in combination by Company, and parties third parties such as Brivo and approved equipment installers. These equipment and services are granted solely pursuant to and in accordance with the separate terms and conditions found at <https://www.brivo.com/terms-of-use-brivo-services/>.

**a. Equipment Purchase and Installation.** Subject to full payment of all amounts stated in Customer's relevant Order Form(s), Company agrees to provide Hardware to Customer. Customer shall own the Hardware (excluding any included or related Software), subject to full payment of the fees stated in the Order Form. Additional Hardware ordered by Customer after the Effective Date shall be provided pursuant to the terms of this Agreement and pursuant to additional Order Form(s) indicating the quantity and fees for such additional Hardware products. Customer agrees to only use the certified installation provider recommended by Company to perform the required installation services described in the Proposal. Customer shall access and use the Hardware solely for Customer's internal business use. The Hardware will be shipped to the location agreed upon by Company and Customer at a date to be mutually agreed upon by Company and Customer. The Brivo-approved installation provider will provide one-time standard installation services of the Hardware for the charges agreed upon between Customer and the installation service provider (subject to increased or additional charges due to special requests or circumstances identified during the installation process requiring additional installation fees). Customer agrees that such installation services are provided subject to the terms and conditions of the installation agreement between Customer and the installation service provider, and that fees for installation services shall be paid pursuant to such separate agreement, and that Company is not the installation service provider under this Agreement. In the event that Customer terminates, without cause, the installation agreement with the approved installation provider, then Company shall have the right to terminate this Agreement effective upon thirty (30) days' prior written notice; provided, however, that Company, in its sole discretion, may elect to assist Customer with securing a replacement Brivo-approved installation provider and continue this Agreement in full force and effect, subject to adjustment of any timelines which may be required due to the delay. Customer agrees to reimburse Company for any losses, damages, expenses and costs which Company may incur as a result of Customer's termination, without cause, of the installation agreement with an approved installation provider. Customer agrees that subsequent Hardware orders shall be for a period co-terminus with Customer's underlying member management Agreement but that, if such term expires or is terminated prior to the thirty seventh month following any such additional order of Hardware, Company may be entitled to demand a reasonable purchase price of any such Hardware by Customer.

**b. Hardware Warranty; Discontinuation and Modification of Products.**

**i. Hardware Limited Warranty.** During the Warranty Period, Company warrants that the Hardware will be free from material defects in materials and/or workmanship. The foregoing limited warranty does not extend to: (i) any failure in the Hardware due to accident, abuse, misuse or negligent use of the Hardware; (ii) any failure resulting from use in other than a normal and customary manner under normal environmental conditions and conforming to the Hardware's instructions; (iii) any failure in the Hardware caused by failing to follow prescribed operating maintenance procedures; (iv) any failure in the Hardware due to modifications, alterations or changes to the Hardware not made or authorized to be made by Company; or (v) damage caused by force of nature, external causes, or act of any Third-party (other than Company or its duly-authorized representative)(collectively, "Warranty Exclusions"). THE WARRANTY IS VOID AND OF NO FORCE OR EFFECT IF ANY



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HARDWARE IS INSTALLED OR SERVICED BY ANY PARTY OTHER THAN AN APPROVED INSTALLATION PROVIDER.

- ii. **Warranty Procedures.** Customer will, within the Warranty Period, notify Company in writing of any Hardware containing defects Customer believes to be covered by the limited warranty provided in paragraph (a) of this Section. Provided the defects complained of are covered under this limited warranty, Company shall, at its sole option and expense, obtain for Customer repaired or replacement Hardware at no cost to Customer. Notwithstanding the foregoing, however, Customer shall be responsible for the installation costs, for the removal of the defective Hardware, and the installation of the repaired or replacement Hardware, at the Company -approved installation service provider's then-current list prices. Further, in such event, Customer shall be liable for any shipping and insurance charges incurred in connection with shipment of the defective Hardware or replacement Hardware (as the case may be). This Section states Customer's sole remedy, and the sole liability of Company, arising out of the limited warranty.
- iii. **Out-of-Warranty Procedures.** In the event that, during the Warranty Period, Customer notifies Company in writing of Hardware containing a material defect in materials or workmanship which results in material impairment of the functionality of the Hardware, but which is caused by one or more of the warranty exclusions described above, Company agrees to repair or replace the defective Hardware (with hardware having substantially similar or enhanced functionality) at Customer's cost and expense; provided that Customer shall also be responsible for paying the costs of removal of the defective Hardware and installation of the replacement or repaired hardware by a Company-approved installation provider.
- iv. **Discontinuation and Modification of Products.** Company may, in its sole discretion, discontinue the sale or license of any of the Hardware, Services or any other equipment or services which may be provided by Company in connection with this Agreement, and any parts or accessories therefor (except where continued availability is required by law) and make such changes affecting their form, fit or function as Company, or its manufacturers or licensors, in their sole discretion, determine, by giving Customer at least thirty (30) days prior written notice but without incurring any liability to Customer therefor. Notwithstanding any such prospective discontinuation, Company agrees to continue to offer the equipment and services under this Agreement for the then-remaining Term, subject to Company's Sunset Policy as outlined in this Agreement.

### 30. Terms Specific to Zen Planner Customers

- a. **Payment of Fees; Interest.** The fees for the Zen Planner Service are listed in the applicable Order Form and may be subject to change without notice. Customer agrees to pay Company in advance the applicable fees for the Zen Planner Service. During the term of this Agreement, Customer's fees may increase, but shall not decrease, as described in the applicable Order Form or as otherwise posted or provided by the Company. Unless other arrangements are pre-approved in writing by Company, billing will occur as otherwise described in this Agreement and payments will be made in the same manner. Invoices may be sent via email. If for any reason we fail to furnish you with an invoice, you are still obligated to pay in a timely manner. You will provide accurate and complete billing information including legal name, address, telephone number, and at least two billing account (both ACH and payment card) information. If such information is false or fraudulent, we reserve the right to terminate the Service and this Agreement, in addition to seeking any other legal remedies. Company is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, rejected payments, etc.) resulting from charges billed by Company. You agree to reimburse Company



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for any penalties, fees, overages or charges incurred by Company because of a rejected charge or payment. Payments made to Company under this Agreement are non-refundable. Any charge disputed by you must be disputed in writing within fifteen days after the billing date, or such charge shall be deemed valid.

- b. Termination of Software Membership.** Unless a Term greater than one month is stated in Customer's Order Form, Customer may terminate membership to the Zen Planner Service (but not necessarily the payment processing, CRM/Engage, and full-service billing products) at any time by providing 30 days advanced notice via the Cancellation Request Form. Customer may request cancellation by logging into its account and going to Setup>Account Info> and select "Cancel" to have a cancellation form emailed to the Contactor by contacting the Zen Planner Support Team at [help@zenplanner.com](mailto:help@zenplanner.com). By way of example, if Customer would like to cancel the Zen Planner Service on June 30, then the Cancellation Request Form should be submitted by May 30. Customer agrees to pay all fees due through the effective date of termination.
- c. Statements for Fees:** Statements for the fees quoted for software licensing shall be automatically drafted monthly based on Customer's original sign-up date for the Zen Planner Software and shall otherwise be due in accordance with the above.

### 31. Privacy Policy Incorporated

Customer acknowledges that Company's Privacy Policy is an integral part of this Agreement and agrees to, its own privacy policy practices and terms, to abide by the terms and spirit of the Privacy Policy, which may be found at <https://www.daxko.com/privacy>. To the extent that Company processes any data originating from the European Union or the United Kingdom, see Company's GDPR policy. Customer agrees to maintain a privacy policy that complies with applicable law and accurately reflects the data collection and use practices of Customer's business. If Customer is subject to the European Data Directive, Customer also represents and warrants that its privacy policy will incorporate the material portions of Company's privacy policy, if required, and that Customer will comply with such law in all respects. To the extent that Company processes any Personal Information that is subject to the General Data Protection Regulation (the "GDPR"), on Customer's behalf, in the provision of the Services hereunder, Customer acknowledge in all cases that Company acts as the data processor of such data and Customer is the data controller of such data under applicable data protection regulations in the European Union and European Economic Area. Customer will obtain and maintain any required consents necessary to permit the processing of data under this Agreement. Customer must also include within its privacy policy that cookies are used to collect information. If Customer is subject to the GDPR, Customer understands that if an integration provider is given access to any Company account, Customer serves as the data controller of such information and the integration provider serves as the data processor for the purposes of those data laws and regulations that apply to Customer. In no case are such integration providers our sub-processors. With respect to data that originates from residents of the State of California, the state-specific subsection of Company's Privacy Policy found at <https://www.daxko.com/privacy#california>.

### 32. Entire Agreement

This Agreement and all order forms, schedules, attachments, and terms and conditions, including, without limitation, the Order Form, the Customer Data Access Request Form (as applicable) and all other terms and conditions, which are incorporated by reference herein, or in an applicable Order Form, collectively represent the complete agreement and understanding between Company and Customer with respect to the subject matter herein and supersede any other written or oral agreement.