SMS Terms of Use - DAXKO

Last Updated: 10/3/2019

These Text Messaging Terms of Use (this "Agreement") govern the use of the text messaging services (including any and all ancillary services, software and documentation, collectively, the "Service") provided by DAXKO, LLC, an Alabama limited liability company, and are supplemental and in addition to the Terms of Use available at https://daxko.com/legal-use-statement/. This Agreement is a binding agreement between (i) DAXKO, (ii) you, the individual end user of the Service ("Customer User") and (iii) each owner and/or operator of an organization or other entity that has been authorized by DAXKO to provide services to the Customer User with respect to the Services ("Customer"). The Service is licensed, not sold, to Customer and each Customer User.

BY DOWNLOADING, INSTALLING, USING OR ACCESSING THE SERVICE, EACH OF CUSTOMER AND EACH CUSTOMER USER (A) ACKNOWLEDGES THAT SUCH CUSTOMER OR CUSTOMER USER HAS READ AND UNDERSTANDS THIS AGREEMENT; (B) REPRESENTS THAT CUSTOMER AND/OR SUCH CUSTOMER USER ARE OF LEGAL AGE AND CAPACITY OR HAS REQUISITE LEGAL AUTHORITY, AS APPLICABLE, TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER OR CUSTOMER USER IS LEGALLY BOUND BY ITS TERMS. IF CUSTOMER OR CUSTOMER USER DOES NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, USE OR ACCESS THE SERVICE.

SMS SERVICE OVERVIEW

- **SMS PROGRAM DESCRIPTION:** Engage Msgs – notifications and alerts
- **OPT-OUT INSTRUCTIONS:** At any time, you can cancel the SMS service by replying STOP, END, CANCEL, UNSUBSCRIBE, or QUIT
- **HELP:** If you forget what keywords are supported, just text HELP to #####, and we'll respond with instructions on how to use our service.
- **MESSAGE FREQUENCY:** Message frequency varies; message and data rates may apply
- **CONTACT INFORMATION:** support@daxko.com; 866-841-8263; 866-996-5335
- **MOBILE PHONE CARRIERS:** We are able to deliver messages to the following mobile phone carriers:
    - **Major carriers:** AT&T, Verizon Wireless, Sprint, T-Mobile, MetroPCS, U.S. Cellular, Alltel, Boost Mobile, Nextel, and Virgin Mobile.

- **Minor carriers:** Alaska Communications Systems (ACS), Appalachian Wireless (EKN), Bluegrass Cellular, Cellular One of East Central IL (ECIT), Cellular One of Northeast Pennsylvania, Cincinnati Bell Wireless, Cricket, Coral Wireless (Mobi PCS), COX, Cross, Element Mobile (Flat Wireless), Epic Touch (Elkhart Telephone), GCI, Golden State, Hawkeye (Chat Mobility), Hawkeye (NW Missouri), Illinois Valley Cellular, Inland Cellular, iWireless (Iowa Wireless), Keystone Wireless (Immix Wireless/PC Man), Mosaic (Consolidated or CTC Telecom), Nex-Tech Wireless, NTelos, Panhandle Communications, Pioneer, Plateau (Texas RSA 3 Ltd), Revol, RINA, Simmetry (TMP Corporation), Thumb Cellular, Union Wireless, United Wireless, Viaero Wireless, and West Central (WCC or 5 Star Wireless).

*****Carriers are not liable for delayed or undelivered messages*****

1. OTHER APPLICABLE TERMS AND CONDITIONS.

Customer and Customer User understands that Customer has been authorized by DAXKO to provide services to Customer User in the Service and Customer has a separate agreement with DAXKO that also governs Customer User's use of the Service, including the Terms of Use available here: https://daxko.com/legal-use-statement/ (the "Legal Use Statement"). The parties agree that the foregoing Subscription Agreement is EXPRESSLY INCORPORATED BY REFERENCE and shall apply to the Services provided hereunder in addition to these terms. In the event of a conflict between this Agreement and the Subscription Agreement, the Subscription Agreement shall control. Customer User acknowledges that Customer User is only being provided access to the Service at the request of Customer pursuant to the terms and conditions of the Subscription Agreement. Customer and Customer User acknowledge that certain terms and conditions of third-party service providers may also apply, as provided for in this Agreement.

2. MONITORING.

Please be advised that DAXKO may monitor Customer's and Customer User's use of and access to the Service to ensure compliance with this Agreement and any other applicable rules, policies, deadlines and instructions. By using the Service, each of Customer and Customer User expressly consents to such monitoring.

3. LICENSE GRANT.

Subject to the terms of this Agreement, DAXKO grants Customer and Customer User a limited, non-exclusive and nontransferable license to access and use the Service for Customer User's personal, non-commercial use strictly in accordance with the Service's documentation.

4. AUTOMATED TEXT MESSAGES.

DAXKO automates text message communications, but Customer is 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 messages related to the Services using automated technology and that the Customer User affirmatively agrees to receive such messages. The prior express consent must include the Customer User's written or electronic acceptance. Specifically, by entering a cell phone number into the Customer's Systems in connection with the Services and not opting such cell phone out of the DAXKO text message feature, Customer is directing DAXKO 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. Customer is responsible for all liability for any failure to receive consent or failure to opt users out of the text message feature. Additionally, Customer may not attempt to spoof sender domains, send spam or other offending text message practices. DAXKO makes no expressed or implied warranty of individual message receipt. DAXKO 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 you send to the Customer Users.

5. COLLECTION AND USE OF PRIVATE INFORMATION.

Each of Customer and Customer User acknowledges that when such party download, install or use the Service, DAXKO may use automatic means (including, for example, cookies and web beacons) to collect information about Customer User's mobile device and about Customer User's use of the Service. Customer and Customer User also may be required to provide certain information about Customer User as a condition to downloading, installing or using the Service or certain of its features or functionality. All information we collect through or in connection with this Service is subject to our (and our third-party service providers')

Privacy Policy. By downloading, installing, using and providing information to or through this Service, Customer User's consent to all actions taken by us with respect to Customer User's information in compliance with the Privacy Policy. DAXKO's privacy policy is available at: https://www.clubautomation.com/privacy-policy. DAXKO's third party service provider's privacy policy is available at: https://www.twilio.com/legal/privacy.

You acknowledge that you have read Twilio's Privacy Policy and understand that it sets forth how Twilio and DAXKO will collect, store, and use your Customer Data. "Customer Data" consists of information made available to us through your use of our Services under these terms, which includes information such as your name, contact information, billing records, call or messaging logs, and traffic routing information, as well as the content of communications sent through or integrated with our Services, such as audio recordings, message bodies, and call recording transcriptions. If you do not agree to Twilio's Privacy Policy, you must stop using the Services.

Twilio or DAXKO may periodically delete your Customer Data. Further, data storage is not guaranteed by us and you agree that we will not have any liability whatsoever for any damage, liabilities, losses, or any other consequences that you may incur relating to the loss or deletion of Customer Data.

You further acknowledge and agree that we may access or disclose Customer Data, including the content of communications stored on our systems, if: (i) we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or government request, (ii) to enforce our agreements and policies, (iii) to protect the security or integrity of our services and products, (iv) to protect ourselves, our other customers, or the public from harm or illegal activities, or (v) to respond to an emergency which we believe in good faith requires us to disclose data to assist in preventing a death or serious bodily injury.

6. RESTRICTIONS

You agree that:

a. You will not attempt to use our Services to access or allow access to Emergency Services, unless you do so consistent with, and have agreed to, the Twilio Inc. 911 – Terms and Conditions.
b. You will ensure that our Services are used in accordance with all applicable Law and third

party rights, as well as these Terms and the Twilio AUP, as amended from time to time.

c. You will ensure that we are entitled to use your Customer Data, including content of communications stored on our systems, as needed to provide our Services and will not use our Services in any manner that violates any applicable law.

d. We reserve the right to reclaim any phone number from your account and return that number to the relevant numbering plan if you do 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 we seek to reclaim a phone number from your account, excluding suspended and trial accounts, we will send you an email at least two (2) weeks' in advance telling you that we are reclaiming the phone number, unless we're otherwise prevented from doing so by the applicable regulatory agency or governmental organization. We also reserve the right to reclaim phone numbers from accounts suspended for failure to pay and/or suspended for suspected fraud, and to reclaim phone numbers in free trial accounts that are unutilized for more than thirty (30) days.

e. You acknowledge that Twilio is the "customer of record" for all phone numbers provided as part of our Services. As the customer of record, Twilio has certain rights with respect to porting phone numbers. You understand and agree that you may use the phone numbers provided as part of our Services subject to the terms of our agreement with Twilio. Unless otherwise required by law, Twilio reserve the right to refuse to allow you to port away any phone number in Twilio's sole discretion. Regardless, we may allow you to port away phone numbers, so long as you (1) have an upgraded account in good standing, and (2) have either ported in or purchased the phone number more than 90 days prior to the port-away date.

7. EMERGENCY CALLS.

THE SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS OR SMS MESSAGES TO ANY EMERGENCY SERVICES. NEITHER DAXKO, ITS AFFILIATES, TWILIO NOR ANY OF THEIR REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CUSTOMER WILL HOLD TWILIO HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE OUR SERVICES TO CONTACT EMERGENCY SERVICES.

8. ENTIRE AGREEMENT.

This Agreement, the Subscription Agreement (for DAXKO and Customer only) and our Privacy

Policy, constitute the entire agreements between Customer User, Customer and DAXKO with respect to the Service and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Service.