

Updated 5/17/2020

This Daxko Full Service Billing Master Service Agreement ("FSB Service Agreement") is expressly incorporated by reference into Customer's associated FSB Order Form and sets out the terms and conditions for the services selected in the FSB Order Form. Terms and conditions stated herein that are not germane to the service(s) and options selected in Customer's FSB Order Form(s) are not operable. For purposes of this agreement, credit card transactions shall refer to ("**Card Holders**") and ACH transactions shall refer to ("**Account Holders**"). Daxko, LLC through its commonly-owned corporate affiliate, Affiliated Acceptance Corporation (collectively "**Daxko**") shall provide the services subject to the following conditions.

**a. Resubmission:** Daxko agrees to use Daxko's Smart Date Technology to provide to the Customer the following credit card (hereinafter referred to as "credit cards") and banking account (hereinafter referred to as "ACH") resubmission services (the "**Services**"):

- i. Daxko agrees to resubmit on behalf of the Customer such credit card transactions originally initiated or charged by the Customer to its customers Card Holders which are subsequently declined and categorized as a "Soft Decline". These are called "Credit Card Resubmissions".
- ii. Daxko agrees to resubmit on behalf of the Customer such ACH transactions originally initiated or charged by the Customer to its customers Account Holders which are subsequently declined and categorized as an "Insufficient Funds" return. These are called "ACH Resubmissions".
- iii. Credit Card Resubmissions will be completed using Customer's credit card processing account and Merchant ID and may include Return fees as identified by the Customer in the authorization form attached to Customer's Order Form.
- iv. ACH Resubmissions will be completed using Customer's ACH processing account and Merchant ID and may include Return fees as identified by the Customer in the authorization form attached to Customer's Order Form..
- v. Daxko will process Credit Card Resubmissions a maximum of three (3) times within thirty (30) days after the original decline, in an attempt to obtain funding for Customer. Only one Return fee may be charged to the Card Holder per Soft Decline item, even if multiple Soft Declines occur.
- vi. Daxko will process ACH Resubmissions a maximum of three (3) times within thirty (30) days after the original decline, in an attempt to obtain funding for Customer. Only one Return fee may be charged to the Account Holder per Insufficient Funds item, even if multiple Insufficient Funds declines occur.
- vii. If a single item results in both Soft Decline(s) and Insufficient Funds decline(s), only one Return fee may be charged.

**b. Outbound Services:** For Credit Card Resubmissions and ACH Resubmissions that are unsuccessful, Daxko will provide the following services for Eligible Accounts (defined in Section 3.d below) (the "Outbound Services"):

- i. Up to three (3) emails will be sent to the Card Holder / Account Holder within 30 days following the original decline solely for the purpose of obtaining updated credit card or account information for such Card Holder/ Account Holder.
- ii. Up to three (3) phone calls will be made to the Card Holder / Account Holder within 30 days following the original decline solely for the purpose of obtaining updated credit card or account information for such Card Holder/ Account Holder.

**c. Inbound Services:** At the Customer's request, Daxko may agree to respond to inquiries and questions from the Account Holders / Card Holders regarding the Services provided hereunder. Daxko shall use reasonable commercial efforts to address such Card Holder and Account Holder inquiries in the manner designated by Customer in the Customer's profile to be completed and mutually agreed upon by Daxko and Customer during the implementation of the Services. Notwithstanding the foregoing, Daxko reserves the right to reverse or refuse to resubmit charges in Daxko's sole discretion. Any Card Holder or Account

Holder issues not directly related to the Services under this Agreement and Return fees hereunder will be re-directed to Customer.

More specifically, Daxko will provide one or more of the following services for Eligible Accounts (defined in Section 3.d below) (the "Inbound Services"):

- i. Field incoming calls and emails in response to Daxko initiated Outbound Services.
  - ii. Field incoming calls and emails from Card Holders / Account Holders to make payment modifications.
  - iii. Field incoming calls and emails from Card Holders / Account Holders to update data such as address or telephone.
  - iv. Field incoming calls and emails from Card Holders / Account Holders to initiate holds or membership cancellations.
- d. Customer Funding:** For each Credit Card Resubmission that is successfully resubmitted, approved and funded, Customer will receive direct funding to Customer's designated account for the full amount of the original transaction plus any Customer designated Return fee specified in the authorization form attached to Customer's Order Form.. For each ACH Resubmission that is successfully resubmitted, approved and funded, Customer will receive direct funding to Customer's designated account for the full amount of the original transaction plus any Customer designated Return fee specified in the authorization form attached to Customer's Order Form..
- e. Charge Backs:** If a Card Holder disputes a charge to their credit card, or if an Account Holder disputes a charge to their account, including any resubmissions of any credit card or ACH transactions, Daxko agrees to cooperate with Customer and Customer's payment processor in connection with Customer providing such documentation to the relevant financial institution and requesting resolution of the dispute; provided, however, that notwithstanding the foregoing, Customer shall ultimately be solely responsible for resolving any such disputes with the Card Holder or Account Holder.
- f. Data Transmission.** Customer acknowledges that Daxko is not a financial or credit reporting institution. Daxko is responsible only for providing the Services to effect or direct certain payment authorizations for Customer (or its Card Holders or Account Holders) and is not responsible for credit reporting or furnishing of any information to credit reporting agencies, 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, credit reporting agency, or internet service provider.
- g. No Debt Collection.** Daxko is not a debt collector and no debt collection services are included in this Agreement.

### **3. Customer Responsibilities:**

- a. Card Holder and Account Holder Disputes:** Customer acknowledges and agrees that:
- i. Any transactions are between Customer and Customer's Card Holder or Account Holder;
  - ii. Daxko is a third-party service provider to Customer, and not a party to any transaction involving Customer's Card Holder or Account Holder;
  - iii. Daxko is not a buyer or seller in connection with any transaction;
  - iv. Daxko will not be responsible for and does not control any aspect of the membership services or facilities provided by Customer; and
  - v. Customer is solely responsible for disputes with its Card Holders and Account Holders regarding payments, and Daxko is not a party to and will not be responsible for any such disputes.

- b. Card Holder and Account Holder Authorization:** Customer is solely responsible for the accuracy and completeness of all data, consents, and authorizations provided by Customer or its authorized users or Card Holders or Account Holders. For example, and without limitation, Customer is solely responsible for:
- i. Obtaining all authorizations from Card Holders and Account Holders to perform the transactions described in this Agreement, including without limitation all credit card, debit card, and ACH transactions, as well as Return fees (if any);
  - ii. Maintaining records of such authorizations during the term of this Agreement and for at least Forty-Eight (48) months thereafter.

In addition to and without limiting any other provision of this Agreement, prior to initiating any transaction contemplated by this Agreement, Customer agrees to obtain, and represents and warrants that Customer has obtained, all legally required authorizations from Card Holders and Account Holders, and that Customer has provided all legally required disclosures and notifications to Card Holders and Account Holders, including, without limitation, clear and conspicuous written disclosures on the Card Holder's or Account Holder's statements, invoices, and membership agreement authorizing the charges to the Card Holder's credit card or Account Holder's account, describing that declined payments will be resubmitted electronically, and listing any applicable Return fees that may be added.

IN ADDITION TO AND WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD DAXKO HARMLESS FROM ANY ACTION, COMPLAINT, CLAIM, OR LITIGATION AGAINST DAXKO FOR ANY VIOLATION OR ALLEGED VIOLATION OF THE FEDERAL ELECTRONIC FUND TRANSFER ACT, AND/OR ANY OTHER APPLICABLE LAWS OR REGULATIONS REGARDING PAYMENT AUTHORIZATIONS AND DISCLOSURES IN ANY APPLICABLE JURISDICTION.

- c. Daxko Resubmission Services Return Fee Authorization:** Customer agrees to complete and submit to Daxko upon execution of this Agreement the Daxko Resubmission Services Return Fee Authorization form, attached to the FSB Order Form, which sets forth any Return fees that will be charged to Card Holders / Account Holders, in accordance with this Agreement.
- d. Eligible Accounts.** Card Holder and Account Holder accounts that are in good standing, current, and are not Delinquent or in Default at the time of the launch of the Services are automatically included for Services under this Agreement ("Eligible Accounts").
- i. A Card Holder / Account Holder account is in "Default" if the Card Holder / Account Holder has obligations for which payment has not been made as agreed upon in the Card Holder / Account Holder agreement, and for which any grace period for curing the untimely payment has expired.
  - ii. A Card Holder / Account Holder account is "Delinquent" if the Card Holder / Account Holder has obligations for which payment has not been made as agreed upon in the Card Holder / Account Holder agreement, and for which any grace period for curing the untimely payment has not expired.
  - iii. Card Holder / Account Holder accounts that are in Default or Delinquent as of the launch of the Services are not included within the scope of this Agreement and are not eligible to receive Services under this Agreement ("Ineligible Accounts"). Daxko will not provide the Services or engage in any other activity with respect to Ineligible Accounts.
  - iv. In addition to Ineligible Accounts, Daxko in its sole discretion may determine that any other account is no longer serviceable. All accounts that are determined to be no longer serviceable will be identified to the Customer. Daxko shall be immediately released from any responsibility with respect to such accounts effective on the date the account is identified to the Customer as no longer serviceable.
  - v. IN ADDITION TO AND WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD DAXKO HARMLESS FROM ANY

ACTION, COMPLAINT, CLAIM, OR LITIGATION AGAINST DAXKO FOR ANY VIOLATION OR ALLEGED VIOLATION OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT, AND/OR ANY OTHER APPLICABLE LAWS OR REGULATIONS REGARDING DEBT COLLECTION IN ANY APPLICABLE JURISDICTION.

- e. Return Fee Legality.** Daxko makes no representation or warranty regarding the legality of the Return fee, including without limitation as to the legality of charging for the Return fee, or as to the manner of charging for the Return fee, or as to the amount of the Return fee, under any applicable laws or regulations.

IN ADDITION TO AND WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD DAXKO HARMLESS FROM ANY ACTION, COMPLAINT, CLAIM, OR LITIGATION AGAINST DAXKO FOR ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAWS OR REGULATIONS REGARDING THE RETURN FEE IN ANY APPLICABLE JURISDICTION.

- f. Customer Representations and Warranties.** Each time Customer provides information regarding any Card Holder / Account Holder account(s) to Daxko for inclusion in the Services, Customer represents and warrants to Daxko that:

- i. All names, account numbers, mailing addresses, telephone numbers, email addresses, balances due, dates of last payment, terms of membership agreements, and other information relating to each and every Card Holder / Account Holder account are true, accurate, and complete; and
- ii. For each Card Holder / Account Holder account, Customer has properly obtained all prior express written or other consents for Customer, Daxko, and/or AAC to contact the Card Holder / Account Holder, including by email and predictive telephone dialing systems, and that each and every Card Holder / Account Holder has not revoked his/her consent(s) or otherwise opted out; and
- iii. Customer has obtained all legally required authorizations from each and every Card Holder / Account Holder; and
- iv. Customer has provided all legally required disclosures and notifications to each and every Card Holder / Account Holder; and
- v. Each and every Card Holder / Account Holder account is a legally binding obligation of each and every Card Holder / Account Holder to Customer, in the amount and under the terms indicated in the information provided to Daxko; and
- vi. None of the Card Holders / Account Holders are in an active bankruptcy; and
- vii. None of the Card Holder / Account Holder accounts are subject to any claims, defenses, rights of setoff, or other issues that might adversely affect the enforceability, amount due, or any other aspect of each account.

- g. Consumer Communications.**

- i. In addition to and without limiting any other provision of this Agreement, Customer represents and warrants that all email addresses and telephone numbers used in connection with the Services have been and will be properly obtained, in compliance with all provisions of the federal CAN-SPAM Act, the federal Telephone Consumer Protection Act, and any other applicable federal, state, and/or local law regarding consumer communications in any applicable jurisdiction. To the extent that Daxko may perform Services which involve contacting consumers on Customer's behalf, Customer agrees it is Customer's responsibility to obtain all necessary consents and provide Daxko with all consumer preference information (such as an opt-out) required to ensure that Daxko does not contact consumers in violation of such laws and regulations.
- ii. No text messaging services are included as part of this Agreement.
- iii. By providing a cell phone number of a consumer to Daxko in connection with the Services and not opting such cell phone out of receiving communications under this Agreement, Customer is

directing Daxko to send communications by predictive telephone dialing system to such cell phone, and certifying that the user of such cell phone has provided their prior written consent to the receipt of those messages, and has not revoked their consent or otherwise opted out of receiving autodialed calls or other communications to such cell phone. Customer is responsible for all liability for any failure to receive consent or failure to opt users out of such autodialed calls and communications, and/or for any failure to notify Daxko of any subsequent revocation of consent or opt out.

- iv. Additionally, Customer may not attempt to spoof sender domains, send spam or other engage in offending text message practices. Daxko makes no express 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 in connection with telecommunication (e.g., email, text and phone) messages that Customer sends.
- v. IN ADDITION TO AND WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD DAXKO HARMLESS FROM ANY ACTION, COMPLAINT, CLAIM, OR LITIGATION ALLEGED OR ASSERTED AGAINST DAXKO FOR ANY VIOLATION OF THE FEDERAL CAN-SPAM ACT, FEDERAL TELEPHONE CONSUMER PROTECTION ACT, AND ANY OTHER APPLICABLE LAWS OR REGULATIONS REGARDING CONSUMER COMMUNICATIONS IN ANY APPLICABLE JURISDICTION.

#### **4. Fees:**

**a. Daxko Recovery Services Fees:** Customer will be charged, on monthly basis, in arrears, a fee for the Services provided in the FSB Order Form in an amount equal to (i) the total gross Return fees collected by Customer during the immediately preceding billing period for Original NSF Declined Transactions, and (ii) a fee per successfully resubmitted Other Declined Transaction as stated in Customer's FSB Order Form. For the purposes of calculating the fees due under this section, the total gross Return fees collected during the applicable billing period shall be the amount of Return fees recorded in the return fee column in the software that are claimed by Daxko and resolved/full collection status. Fees paid under this section are non-refundable. No refunds or credits shall be provided to Customer for any Return fees that may be charged back or refunded to the Card Holder at the Customer's direction.

Customer agrees that it shall launch the Services under this Agreement by the date that is 45 days following the later of (i) Customer's signing this Agreement and (ii) Customer's launch on Daxko Payment Services (the "Expected Launch Date"). In the event Customer fails to launch the Services under this Agreement by the Expected Launch Date, beginning upon the Expected Launch Date, the Customer will be billed and agrees to pay the monthly no launch fee stated in the FSB Order Form until the Services are launched. In the event of an early termination of this Agreement, Customer agrees to pay an early termination fee. Customer agrees to pay a one-time implementation as stated in the FSB Order form, if any. Fees paid under this section are non-refundable. No refunds or credits shall be provided to Customer for any Return fees that may be charged back or refunded to the Account Holder at the Customer's direction.

Daxko will use commercially reasonable efforts to perform the system configuration services necessary for Customer to begin using one or more of the Services on a date ("Launch Date") mutually agreed upon by Customer and Daxko. Customer agrees to cooperate with Daxko and provide all required information and documentation on or before the Launch Date. Customer agrees to launch all of the selected Services within forty-five (45) days from the Effective Date. If Customer is currently using any of the listed services, then the Launch Date and the Effective Date for such services shall be identical and the end of the term of the prior agreement, if applicable. If due to no substantial fault of Daxko, and subject to the provisions of Section 2 above, if Customer does not timely launch each of the selected services then Customer's Launch Date for any remaining selected services will be deemed to be the date that is forty-five (45) days from the Effective Date.



**b. Auto Debit Authorization:** Customer hereby authorizes Daxko to debit Customer's designated bank account to be identified to Daxko via separate documentation, for the full amount of all fees, expenses and reimbursements then due under this Agreement. Customer shall maintain sufficient funds in Customer's designated bank account at all times during the Term of this Agreement to enable Daxko to debit such accounts for the fees, expenses and reimbursements then due under this Agreement, the failure of which 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 Daxko an auto debit authorization form together with a voided check from Customer's designated bank account, with the necessary information for Daxko 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 Daxko promptly upon any relevant changes to the information set forth therein. Customer is responsible for reimbursing Daxko for any fees or penalties incurred by Daxko in connection with debiting from the account designated by Customer.

**c. Statements for Fees:** Statements for fees will be sent via electronic mail to Customer within the first five (5) business days following the end of the Service Period. If Customer does not dispute the statements within five (5) days of receipt, then Customer's designated bank account will be automatically debited approximately fifteen (15) days following the date of the statement. 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. If Customer does not dispute the statement within five (5) days of receipt, then Customer's designated bank account will be automatically debited ten (10) days from the date of the statement. Customer agrees that Daxko may include the fees due under this Agreement as a line item charge on Customer's monthly statement for the software services.

**5. Termination:** 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. No such termination shall relieve Customer's obligation to pay fees accrued up to the effective date of the termination. Furthermore, in the event of early termination of this Agreement by Customer (other than due to material uncured breach by Daxko) prior to the expiration date of the Initial Term or any renewal term, Customer shall be obligated to pay to Daxko **50%** of the fees that Daxko would have received from Customer if this Agreement had remained in effect until its scheduled expiration date (with the amount of each remaining month's fee being equal to the average monthly fee charged during the immediately preceding six (6) month period). Such fees shall be paid within thirty (30) days after the effective date of termination. Customer agrees that (a) a breach by Customer under this Agreement is a breach under all other agreements between Customer and Daxko, and a breach by Customer under any other agreement between Daxko and Customer is a breach of this Agreement, and (b) all other agreements between Customer and Daxko are amended to include this provision. Customer agrees to maintain contracts for a Daxko-affiliated software and Daxko Payment Services during the term of this Agreement. In the event that Customer's Daxko-affiliated or Daxko Payment Services agreement expires or is terminated, Daxko shall have the right to immediately terminate this Agreement.

**6. Exclusivity; Non-Competition; Non-solicit:** Customer represents that this Agreement is not in conflict with any obligations Customer currently has to any other person or entity. During the term of this Agreement, Daxko shall be the exclusive provider of the Services to Customer. During the term of this Agreement and for twelve (12) months after termination, Customer shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, investor, corporate officer, director, or in any other corporate, individual or representative capacity, (i) engage or participate in any business within the United States that is in competition in any manner whatsoever with the Services provided by Daxko under this Agreement, (ii) market, sell, offer to sell or otherwise provide for Customer's own benefit, or to any third party, any product, equipment, or service competitive with any product, equipment, or service provided by the Daxko under this Agreement; or (iii) solicit, suggest, induce or influence any other customer of Daxko to terminate or limit his or her engagement or relationship with Daxko. Customer acknowledges that in view of the nature of the business in which the Company is engaged, and the confidential information that will be disclosed to Customer in connection with this Agreement, the restrictions in this provision are reasonable and necessary in order to protect the legitimate protectable interests of Daxko. The foregoing shall be enforced to the fullest extent allowed by applicable law.

**7. Confidential Information:** From time to time one party (the “Receiving Party”) may receive from the other party (the “Disclosing Party”) proprietary and confidential information (“Confidential Information”), including, without limitation, the terms and conditions of this Agreement, financial information, pricing, business plans, usernames, passwords, Daxko Technology, and any information that is marked as “confidential” or should be reasonably understood to be confidential or proprietary to the Disclosing Party. The Receiving Party agrees that the Receiving Party will not disclose the Confidential Information to any third party, nor use the Confidential Information for any purpose not permitted under this Agreement. The Receiving Party agrees to use at least the same degree of care that it uses to protect the confidentiality of its own information, but in any event, no less than a reasonable degree of care. The nondisclosure obligations set forth in this paragraph shall not apply to information that the Receiving Party can document (i) is generally available to the public (other than through breach of this Agreement), or (ii) was already lawfully in the Receiving Party’s possession at the time of receipt of the information from the Disclosing Party, or (iii) was obtained by the Receiving Party from a third party without a breach by the third party of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information. “Daxko Technology,” for purposes of this Agreement, means the proprietary technology of Daxko, including hardware designs, algorithms, software, software tools, user interface designs, architecture, class libraries, objects, documentation, know-how, trade secrets, business methods, and any related intellectual property rights, and also including any derivatives, improvements, enhancements or extensions of any of the foregoing conceived, reduced to practice, or developed by or on behalf of Daxko, whether during the term of this Agreement or otherwise.

Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a “Legal Order”), provided that the Receiving Party shall first make commercially reasonable efforts to provide the Disclosing Party with (a) prompt written notice if such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (b) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

As between Daxko and Customer: (i) Daxko shall own all Daxko Confidential Information and, except as expressly provided herein, Customer shall not have any right, title, or interest therein; and (ii) Customer shall own all Customer Confidential Information and, except as expressly provided herein, Daxko shall not have any right, title, or interest therein.

**8. DISCLAIMER.** DAXKO DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (STATUTORY, EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT DAXKO KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. DAXKO SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTIFY THEFT, OR INVASION OF PRIVACY BY ANY THIRD PARTY. DAXKO DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. DAXKO EXPRESSLY DISCLAIMS ANY WARRANTY AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES. DAXKO EXPRESSLY DISCLAIMS ANY WARRANTY OR 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, LOSS OF MEMBERSHIPS, MEMBERSHIP OR CONTRACT DAMAGES DUE TO MEMBER CANCELLATION, OR LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DAXKO'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE MONTH IN WHICH THE BREACH OR DEFAULT OCCURRED. ALL DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE MADE ON BEHALF OF BOTH DAXKO AND ITS AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS.

### **9. Indemnity.**

**a. By Customer.** Customer agrees to defend, indemnify, and hold harmless Daxko and its directors, members, officers, employees, licensors and agents, from and against any and all claims, allegations, charges, counterclaims, third-party claims, lawsuits, arbitrations, actions, appeals, losses, damages, punitive damages, exemplary damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees (collectively, "Daxko Claims"), arising in any way from or in any way related to (i) Customer's violation or breach of this Agreement (including without limitation any breach of any representation or warranty in this Agreement), or (ii) any Daxko Claim by or on behalf of a Card Holder or Account Holder (except such claims that directly arise from Daxko's gross negligence or intentional misconduct), provided that Daxko (a) gives Customer written notice of any such Daxko Claim within fifteen (15) days of Daxko's receipt, (b) permits Customer to have sole control and authority with respect to the defense or settlement of any such Daxko Claim, and (c) provides Customer all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such Daxko Claim, at Customer's cost and expense. Following its receipt from Daxko of notice of a Daxko Claim, Customer shall acknowledge the Daxko Claim and accept defense on behalf of Daxko within seven (7) days. Notice of Daxko Claims shall be provided to the contact information of record last provided by Customer to Daxko by certified mail return receipt requested and electronic mail, and notice shall be deemed received as of the date sent.

**b. By Daxko.** Daxko agrees to defend, indemnify, and hold harmless Customer and its directors, members, officers, employees, and agents, from and against any and all claims, allegations, charges, counterclaims, third-party claims, lawsuits, arbitrations, actions, appeals, losses, damages, punitive damages, exemplary damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees (collectively, "Customer Claims"), directly arising from the gross negligence or intentional misconduct of Daxko during the course of providing the Services, provided that Customer (a) gives Daxko written notice of any such Customer Claim within fifteen (15) days of Customer's receipt, (b) permits Daxko to have sole control and authority with respect to the defense or settlement of any such Customer Claim, and (c) provides Daxko all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such Customer Claim. Following its receipt from Customer of notice of a Customer Claim, Daxko shall acknowledge the Customer Claim and accept defense on behalf of Customer within seven (7) days. Notice of Customer Claims shall be provided to the contact information of record last provided by Daxko to Customer by certified mail return receipt requested and electronic mail, and notice shall be deemed received as of the date sent.

### **10. Service Option Definitions:**

- a. Resubmissions:** Strategic reattempt to recover soft decline items.
- b. IBOB:** Inbound and outbound call and/or email campaigns for member outreach and decline recovery.
- c. Decline Reasons:** Explanation of reasons for a failed transaction.



- d. Life Cycle Campaigns:** Length of time a declined item will be actively pursued.
- e. Lockout:** Deactivation or termination of a member account with an unresolved declined.
- f. Payment Plans:** Permission granted to Company to arrange payment installments to resolve a balance on behalf of Customer.

### **11. Miscellaneous:**

- a. Customer shall pay any and all applicable international, federal, state, and local sales, use, value-added, excise, duty, and any other taxes, fees or duties (other than taxes based on Daxko's net income) that are assessed on or as a result of the Services. Any such taxes, fees and duties collected by Daxko from Customer on behalf of a governmental agency shall not be considered a part of, a deduction from, or an offset against, payments due to Daxko for the Services hereunder.
- b. Customer represents and warrants that Customer will comply with all laws and regulations applicable to Customer's use of the Services, and agrees to use Services only as permitted by applicable law, including but not limited to financial services and consumer laws and regulations.
- c. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, or via a recognized national overnight delivery service addressed as specified on page one. Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.
- d. Customer's rights to use Services are personal to Customer, are non-exclusive, non-transferable and non-sub licensable. Customer shall not attempt to assign or transfer any rights or obligations under this Agreement without the prior written approval of Daxko. Any attempt to assign this Agreement in violation of the provisions of this paragraph will be void and of no force or effect. Customer and any attempted transferee shall be jointly and severally liable to Daxko for any costs or damages incurred by Daxko in connection with attempted assignments not permitted by this paragraph. This Agreement shall inure to the benefit of the parties hereto and is not intended to inure to the benefit of Customer's clients nor any other third parties.
- e. Customer acknowledges that Daxko has set its prices and entered into this Agreement in reliance upon the limitations and exclusions of liability, the disclaimers of warranties and damages, and Customer's indemnification obligations set forth herein and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if this Agreement is found to have failed of its essential purpose.
- f. Daxko's performance hereunder shall be excused where delayed or hindered by war, riots, civil unrest, embargoes, strikes or other concealed acts of workmen, casualties, accidents, acts of nature (including flood or earthquake), computer attacks (whether by government/nation entities or otherwise), or other occurrences beyond Daxko's control. Customer agrees that Daxko is not responsible or liable for acts of God or Internet blackouts and brownouts beyond the control of Daxko. Daxko shall notify Customer in the event of any of the foregoing occurrences. Should such occurrence continue for more than thirty (30) days, Daxko or Customer may terminate this Agreement with no further obligation, except for the payment of fees incurred prior to the event giving rise to the termination. In the event that credit card companies, agencies, or processors have rule or regulation changes that impact this Agreement, the parties will work cooperatively in good faith to reach mutual agreement to address such changes.
- g. Any legal action arising out of Daxko's providing the Services hereunder shall be brought within one  
(1) year of the occurrence giving rise to the legal action, or it shall be deemed waived.

- h. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, excluding the conflicts of law provisions thereof. The parties agree that any disputes among them arising from or related to this Agreement shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association in a mutually agreed upon location. The parties shall each be responsible for initial payment of one-half of any arbitration fees, but upon final resolution the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Notwithstanding the foregoing arbitration provision, Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its representatives may cause irreparable harm to Daxko for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Customer or its representatives, Daxko shall, in addition to any and all other rights and remedies that may be available at law (which Daxko does not waive by the exercise of any rights to arbitration hereunder), be entitled to seek a temporary restraining order, injunction, specific performance and any other equitable relief that may be available from a court of competent jurisdiction, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
- i. No provision of this Agreement may be waived, modified or discharged unless such modification, waiver or discharge is agreed to in a writing signed by the parties. No waiver by either party at any time of any breach by the other party shall be deemed a waiver of similar or dissimilar provisions.
- j. The parties intend for all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, in the event that any provision or portion of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, for any reason, under present or future law, such provision shall be severable, and the remainder thereof shall not be invalidated or rendered unenforceable or otherwise adversely affected. Without limiting the generality of the foregoing, if a court should deem any provision of this Agreement to create a restriction that is unreasonable as to scope, duration or geographical area, the parties agree that the provisions of this Agreement shall be enforceable in such scope, for such duration and in such geographic area as any court having jurisdiction may determine to be reasonable.
- k. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama excluding the conflicts of law provisions thereof and both parties stipulate to the exclusive jurisdiction of the state and federal courts of that jurisdiction. The parties agree that any disputes among them arising from or related to this Agreement shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association in a mutually agreed upon location. The parties shall each be responsible for initial payment of one-half of any arbitration fees, but upon final resolution the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Notwithstanding the foregoing arbitration provision, Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its representatives may cause irreparable harm to 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.
- l.
- m. This Agreement shall be the entire agreement among the parties relating to its subject matter and supersedes any prior agreement (whether oral or written) entered into between Daxko and Customer relating to the subject matter hereof.