

CUSTOMER		COMPANY	
Legal Customer Name:	The City of Tupelo, Mississippi d/b/a Tupelo Aquatics Center	Club Automation	
Contact Name:	Amy Kennedy	Attn: Legal Department	
Contact Title:	Director	2275 Half Day Road, #182	
Street Address:	PO Box 3608, Tupelo, Mississippi, 38803	Bannockburn, IL 60015	
		Account ID: 1203382	

This order form (the "Order Form") is entered into and effective as of the date of the last signature (the "Effective Date") by the authorized representatives of each of the parties by and between Daxko, LLC d/b/a Club Automation ("Club Automation" or "Company") and the above-named organization (the "Customer") and hereby expressly incorporates by reference the Club Automation Master Service Agreement available at <https://www.clubautomation.com/master-service-agreement> ("Service Agreement"), and subject to Customer's contract addendum, as amended, attached at Exhibit C, together with all additional terms and conditions for the services selected below, which are incorporated by reference as if included herein (collectively, the "Agreement"). Customer acknowledges that it has reviewed the terms of the Service Agreement and acknowledges that it is an integral part of the Agreement. Defined terms in this Order Form and in the Service Agreement shall have the same meaning in both documents. In consideration of the mutual promises made and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Company and Customer agree as follows:

1. **License(s) to Customer.** Subject to the terms, conditions, and restrictions set forth in this Agreement, and in consideration of the performance by Customer of the obligations and conditions of the Agreement, Company hereby grants to Customer for the Term of this Agreement a non-exclusive, non-transferable, revocable, limited license to use the Services listed in this Order Form. Such licenses are all specific to the authorized users of Customer to access and use, for Customer's internal business purposes.
2. **Description of Services.** The following, selected Services are licensed pursuant to the terms and conditions of the Agreement (the "Services"):

Services	
X	Club Automation Software
X	SMS Text Messaging
X	CA Mobile

3. **Term.** The initial term of all selected services will commence on the Launch Date and shall continue 72 months from the Launch Date of the first selected service unless terminated as provided herein (the "Initial Term"). After the expiration of the Initial Term and each renewal term thereafter, this Agreement will be automatically renewed at the then-current standard Company pricing for successive renewal terms, each with a duration equal to the duration of the Initial Term, unless either party gives written notice to the other party of its intent not to renew at least 60 days prior to the expiration of the then current term (the Initial Term and each renewal term are collectively the "Term").

In no event shall the Term of any selected service exceed the term of the underlying software. Customer agrees that as a condition of transitioning from one Company-affiliated software to another, Customer must, within six (6) months of the Effective Date of this Agreement, launch Gains Payment Processing on its current Company-affiliated software platform before beginning implementation under this Agreement. Customer acknowledges that the Gains Payment Processing pricing quoted under this Agreement shall only become effective upon the Launch Date of the Company-affiliated software.

4. **Launch Date.** Company 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 Company. Customer agrees to cooperate with Company and provide all required information and documentation on or before the Launch

Date. Unless otherwise agreed, Customer agrees to launch all of the selected Services within 12 months from the Effective Date. If Customer is currently using any of the listed products, then the Launch Date and the Effective Date for such services shall be identical unless otherwise set forth in the preceding paragraph.

If due to no substantial fault of Company, and unless otherwise specified, 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 12 months from the Effective Date, and all fees will be charged accordingly.

5. **Fees.**

**a. Up Front Implementation Fees:** For all selected Services, Customer will be charged one-time, non-refundable fees, due on the Effective Date, for system configuration services, data conversion, training services, and other professional services as set forth in Exhibit B, exclusive of travel time. All additional professional services will be billed at Company's then-current rates.

**b. Fees:** In exchange for the license to the selected Service(s), Customer agrees to pay the license fees set forth in Exhibit B. For the avoidance of doubt, any late fees incurred by Customer will not be used to offset any retroactive adjustment of invoiced amounts.

**c. Transaction Fees:** Customer will pay Company the following transaction fees listed in Exhibit B, if any.

**d. Fee Increases.** Unless otherwise indicated, the fees quoted for any products in this Order Form may be increased by Company, provided that the percentage increase in any twelve (12) month period shall not exceed the percentage increase in the Consumer Price Index plus three percent (3%) during the period between rate changes. 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. The foregoing limitation does not apply to: (a) transaction fees, training fees, installation fees, or any reimbursable expenses - all of which will be available at then-current rates or, (b) services no longer offered for license or sale, or (c) when any third-party provider increases the fees it charges to Company beyond the limitation provided herein, in which case Company reserves the right to pass such additional fees on to Customer.

**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 this 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.

6. **Prior Agreements.** If Customer has entered into any previous agreements with Company for the selected products and services ("Prior Contracts"), this Agreement entirely replaces and supersedes all conflicting provisions of such Prior Contracts.

7. **SMS Services**

**a. SMS Services.** This Order Form expressly incorporates by reference the Terms of Use available at <https://www.daxko.com/text-messaging-terms-of-use>) ("Text Messaging Service Agreement").

**b. Description of Services:** Daxko will provide English language, outbound text messaging services to Customer's members and at Customer's control and direction through Customer's account (the "Services"). Customer acknowledges that the Services are provided solely under Customer's direction

and control. Customer is solely responsible for properly documenting all consumer opt-out requests and shall indemnify and hold Company harmless against any claims brought by a Consumer regarding failure to process any such requests to suspend text messaging to a consumer phone number.

**c. Pricing.** Daxko shall charge Customer a monthly service fee following the Launch Date in accordance with Exhibit B.

**8. Mobile - Branded**

**a. Development.** Company has developed a mobile device application that allows mobile phone or similar internet capable handheld device users (specifically users of devices operating on the iPhone or Droid platforms) to view Customer programs and events online through a Customer-branded application (such software, together with all associated iterations thereof, code, components, media, printed materials, and online or electronic documentation collectively referred to as the "Software") using a website template that allows Customer to control access to Software and perform various other functions (the "Admin Website," as further defined hereafter). Customer has requested that Company develop and make the Software and Admin Website available to Customer via the Apple platform. Customer acknowledges that such service is contingent upon Customer opening and maintenance of an Apple Developer Account. Customer acknowledges that it is solely responsible direct payment to Apple for any and all annual or monthly fees associated with opening and maintaining an Apple Developer Account. Company shall make available for download the Software to License and Customer's branch members (each a "Member"). Company shall make and attempt to make the Software available at iPhone and Droid mobile phone application stores so that Customer's Members may download it from such vendors; provided, however, downloading the Software 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 the Software or for any failure by any vendor, temporary or permanent, to offer the Software for sale or other acquisition to Customer or to Customer's Members.

**b. Pricing.** Company shall charge Customer a monthly service fee following the Launch Date as provided in Exhibit B. Company may restrict Customer's access to the Admin Website or terminate this Agreement by providing notice to Customer if any undisputed amounts required to be paid hereunder are not paid by the date which is thirty (30) days past the due date thereof. Customer shall be directly responsible for paying to Apple during the Term of this Agreement any Apple Developer Account fees.

**c. Launch Date.** The term of this Agreement shall begin on the Effective Date, provided however, that Company will not begin billing for the Services discussed in this section until the date the Software is approved by Apple or Google as "Ready for Sale" in the Apple or Google app store ("Launch Date").

**THE PARTIES ACKNOWLEDGE THAT THEY HAVE REVIEWED THIS ORDER FORM, THE CLUB AUTOMATION MASTER SERVICE AGREEMENT AND ALL OTHER TERMS EXPRESSLY REFERENCED HEREIN AND WHICH ARE EXPRESSLY INCORPORATED BY REFERENCE, WHICH THE PARTIES AGREE ARE ESSENTIAL TO THE PARTIES' AGREEMENT. To the extent that there are conflicts between the Order Form, the Service Agreement, and/or any associated terms or agreements, this Order Form shall control. By signing below, customer represents and warrants that it has the requisite power and authority to execute, deliver, and perform its obligations under this agreement. Customer has been duly authorized by all necessary corporate or organizational action by customer to execute this agreement. The parties express their acceptance of all of the terms and conditions of this agreement. This Agreement may be executed in multiple counterparts, with .pdf or electronic signatures, and each party waives any rights or requirements under any law or regulation that requires an original, non-electronic signature or the delivery or maintenance of a non-electronic record.**

CUSTOMER	COMPANY
Signature:	Signature:

Name:	Name:
Title:	Title:
Date:	Date:

**Exhibit A**  
**Licensed Locations/Branches Under This Agreement**

<b>Location Name</b>	<b>Street</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
Tupelo Aquatics Center	692 N Veterans Memorial Blvd	Tupelo	MS	38804

**Exhibit B -- Pricing**

**Monthly Software License Fee**

Service Year	Monthly Managed Service Fee
Service Year 1	\$699.00

**Training / Implementation / Professional Services**

Billing Element	Fee
Training and Implementation	\$0.00

**Branded Mobile App Fees**

Name	Rate	Billing Element
Monthly License Fee	\$199.00	Per Location

**SMS Fees**

Name	Rate	Billing Element
Monthly SMS Text Messaging (Includes 5,000 SMS messages)	\$63.00	Per Location
Excess Text Message Fee	\$.01	Per Processed SMS message over the monthly maximum per location

Exhibit C - Mandatory  
Addendum to All City of  
Tupelo Contracts June 2015  
(as amended)

The City of Tupelo (TUPELO), despite any contrary provision contained in any contract to which TUPELO is a party, does not waive any rights, benefits, or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contract to which TUPELO is a party are hereby null, void and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which TUPELO is a party.

1. TUPELO does not waive any claim; past, present, or future.  
Miss. Const. Art. 4, § 100; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
2. TUPELO does not waive its sovereign immunity. TUPELO shall only be responsible for liability resulting from the actions of its officers, agents, and employees acting within the course and scope of their official duties.  
Miss. Code Ann. § 11-46-1, et seq.
3. TUPELO does not waive its Constitutional Eleventh (11<sup>th</sup>) Amendment immunity.  
U.S. Const. Amend. XI.
4. TUPELO does not agree to the application of laws of another state.  
U.S. Const. amend XI; Miss. Code Ann. 11-11-3; Miss. Code Ann. 11-45-1; *City of Jackson v. Wallace*, 196 So. 223 (1940)
5. TUPELO does not agree to situs of jurisdiction or venue of suits being other than Lee County, Mississippi or the Northern District of Mississippi, United States District Court.  
Miss. Code Anno. 11-45-25.
6. TUPELO does not limit the tort liability of another party to the amount of the contract or to any other set amount.  
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002); Miss. AG Op., Hathorn (May 28, 1992); Miss. AG Op., Davis (March 3, 1993).

7. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO.  
Miss. Code Anno. 11-45-25.
8. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.  
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. §15-1-5;  
Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
9. TUPELO does not agree to submit to binding arbitration.  
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18,2002).
10. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.  
Miss. Code Ann. § 31-7-305.
11. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.  
Miss. Code Anno. § 25-61-9 (7).
12. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.  
Miss. Code Anno. § 25-61-9 (1).
13. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:





(a) Collect, process, store, and retrieve information which is exempt; (b) Control and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

Miss. Code Anno. § 25-61-9 (6).

14. In compliance with the Mississippi Accountability and Transparency Act of 2008, all payments made by TUPELO will be posted on a public website. The information posted will include: the date of payment, vendor name, vendor's city and state and the payment amount. The release of any such information supersedes any applicable non-disclosure or confidentiality obligations of TUPELO.

Miss. Code Ann. §§ 27-104-151 to 159.

15. Any Contractor/Seller of TUPELO shall ensure compliance with the Mississippi Employment Protection Act.

Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

16. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the successors' rights and powers conferred by law, unless there is specific statutory authority to enter into such contract. In the absence of specific statutory authority, such contracts are voidable by the successors in office.

MS AG Ops., Barton (January 8, 2014) and Barton (July 15, 2011) (both relying on Biloxi Firefighters Assoc. v. City of Biloxi, 810 So.2d 589 (Miss. 2002)).

17. TUPELO does not have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. TUPELO cannot grant, renew, or extend any such franchise, privilege or right, without compensation or for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

18. All contracts must be approved by the City Council of TUPELO, subject to the veto power of the Mayor of TUPELO.

MS AG Ops. 2012-00013