

## Subscriber Agreement

**IMPORTANT!** CAREFULLY READ ALL OF THE FOLLOWING TERMS AND CONDITIONS BEFORE PROCEEDING. THIS SUBSCRIBER AGREEMENT (THE “**AGREEMENT**”) IS AN AGREEMENT BETWEEN YOU (“**YOU**”) AND IXACT CONTACT SOLUTIONS INC. (THE “**COMPANY**”) THAT GOVERNS YOUR SUBSCRIPTION(S) (DEFINED BELOW) AND YOUR RECEIPT OF, ACCESS TO AND USE OF ONE OR MORE OF THE RELEVANT APPLICATIONS (DEFINED BELOW). “**WE**” AND “**US**” MEANS BOTH YOU AND COMPANY. THE EFFECTIVE DATE OF THIS SUBSCRIBER AGREEMENT IS WHEN YOU ACCEPT OR ARE DEEMED TO ACCEPT IT IN ACCORDANCE WITH THE PROCEDURE SET OUT HEREIN (THE “**EFFECTIVE DATE**”).

**REGISTERING AS A USER.** YOUR CLICKING THE “I AGREE” BUTTON OR CHECKING THE “I AGREE” BOX (AS APPLICABLE), IS THE EQUIVALENT OF YOUR SIGNATURE AND INDICATES YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS AND THAT YOU INTEND TO BE LEGALLY BOUND BY THEM.

THIS DOCUMENT CONSISTS OF TWO (2) PARTS: (I) THE AGREEMENT THAT IS SET OUT DIRECTLY BELOW; AND (II) THE SUPPLEMENTAL TERMS FOR THE WEBSITE APPLICATION (THE “**SUPPLEMENT**”) THAT DIRECTLY FOLLOWS THE AGREEMENT.

You hereby consent to the exchange of information and documents between us electronically over the Internet or by e-mail, if to you, to the e-mail address you provide to Company at the time of your registration or to any such subsequent e-mail address that you provide to Company and if to Company to [info@ixactcontact.com](mailto:info@ixactcontact.com) and that this electronic Agreement shall be the equivalent of a written paper agreement between us.

**1. Opening a User Account.** To open a user account, you must complete the sign-up process. In signing up for a user account, you agree to submit true, up to date and complete information and promptly update such information should it change. By opening a user account you are purchasing a subscription (“**Subscription**”) to have access to and use of one or more products or services offered by Company (each, an “**Application**”). Should Company suspect that such information is false, not up to date or incomplete, Company shall promptly notify you by e-mail and/or telephone and may suspend your user account until you have confirmed that all registration information is true, up to date and complete. If you do not verify that the sign-up information is true, up to date and complete, or you do not correct any inaccurate or incomplete information, Company may discontinue your account. Notwithstanding the foregoing, if you are a registered user of the on-line services of Morris Marketing Group Inc. (“**Morris**”) and have completed the Morris Subscription Form, an account with Company has automatically been created for you and the above provisions of this Section 1 do not apply to you. In such event, you are described herein as a “**Morris User**”. If you are a Morris User, your Morris ID and password (issued to you by Morris) will allow you to use the services of Company through the Morris AGENTaccess on-line portal other than the Website Application (as defined in the Supplement).

**2. User ID and Password.** Upon sign-up for each Application, Company will provide you with a separate password. Your e-mail address will be your user ID. Other than as permitted by Section 8, you will not disclose any of your passwords to any third party and will be responsible for keeping your password(s) confidential. You are entirely responsible for any and all activities and charges that are incurred through the use of your password(s), and any claims, liability, damages, losses and costs (including legal fees) resulting from the unauthorized use of your password(s). You agree to immediately notify Company of any unauthorized use of your password(s) or any other breach of security that is known or becomes known to you. You will be liable for any unauthorized use or misuse of your password(s) by anyone using them.

**3. Ownership and Copyright.** Other than your information, data, databases, graphics, video, text, files, transaction documents and other materials provided, submitted or uploaded by you that were owned by you prior to your providing, submitting or uploading them (“**User Content**”), you acknowledge that any and all information, content, reports, data, databases, Templates (as defined below), graphics, interfaces, designs,

web pages, text, files, software, services, product names, company names, trade-marks, logos and trade names contained in these Applications (collectively the “**Company Content**”) including the manner in which the Company Content is presented or appears and all information relating thereto, are the property of Company, or its licensors, as the case may be.

#### **4. Payment Terms.**

- (a) For Individuals You agree that payment for the use of each Application will be made to Company through automatic charges taken from the credit card that you identify and authorize for payments. For the CRM Application only: (i) payments will start from the date that the free trial period ends; (ii) if you select the monthly payment option, payments will be processed on the same date each month; (iii) if you select the annual payment option, payments will be processed on the same date each year; (iv) any one-time charges that you incur will be processed on the next business day following the date on which such charges are incurred; (v) all payments are non-refundable. For all Applications, invoices are available upon request. The provisions of this Section 4(a) shall not apply to Morris Users whose payments for use of the services hereunder are made to Morris in accordance with the Morris payment terms and conditions.
- (b) For Individuals Pursuant to Corporate Agreements. If you are a registered user as a result of a corporate agreement entered into between Company and the legal entity for whom you act, payments will be in accordance with the terms and conditions in the applicable corporate agreement. Notwithstanding the foregoing, you will be responsible for payment for: (i) additional products and services (i.e., additional quantities of e-mails above the base quantity provided as part of the CRM Application); and (ii) additional Applications all through automatic charges taken from the credit card that you identified and authorized for payments during signup.
- (c) Changes to Charges. Company may adjust any charges for any Application with at least thirty (30) days’ prior written notice to you.

**5. Permitted Use.** Company hereby grants to you a personal, revocable, non-sublicensable, non-transferable and non-exclusive license to use, access and read the Company Content solely for your own use.

**6. Restrictions On Use.** You agree that you will not:

- (a) distribute the Company Content for any purpose including without limitation compiling an internal database, redistributing or reproduction of the Company Content by the press or media or through any commercial network, cable or satellite system; or
- (b) create derivative works of, reverse engineer, decompile, disassemble, adapt, translate, transmit, arrange, modify, copy, bundle, sell, sub-license, export, merge, transfer, adapt, loan, rent, lease, assign, share, outsource, host, publish, make available to any person or otherwise use, either directly or indirectly, the Company Content in whole or in part, in any form or by any means whatsoever, be they physical, electronic or otherwise. You shall not permit, allow or do anything (including by omission) that would infringe or otherwise prejudice the proprietary rights of Company or its licensors or allow any third-party to access the Company Content without proper authorization from Company.

**7. User Content.** All the User Content that you upload to an Application will remain your exclusive property. Company is authorized to have access to and make use and to further authorize access and use of your User Content as appropriate for the performance by Company of its obligations under this Agreement. Upon the termination or expiration of this Agreement, Company will archive all of your User Content that is then in Company’s possession and which then exists in written form or in machine-readable format and media for such period of time as Company determines in its sole discretion or, in the case of personal information, in accordance with Company’s Privacy Policy and Company’s privacy obligations under applicable law. Company’s data retention policy is to delete and destroy all User Content eighteen (18) months (or such longer period as Company may deem fit on a case-by-case basis) following termination or expiration of this

agreement. Company will not use your User Content for any purpose other than providing, managing and administering the services provided to you through your use of an Application. Except in the case of any inaccuracies caused by Company, you will be solely responsible for the accuracy and completeness of any of your User Content provided to Company. For the CRM Application, contact-related data deleted by you is initially moved to the Recycle Bin and can be restored subsequent to deletion unless it is permanently deleted by you using the Recycle Bin functions. However, any such data that remains in the Recycle Bin and is not restored by you within six (6) months will be automatically and permanently deleted.

**8. Multiple User Access.** As the owner of your account you may grant other users (“**Additional Users**”) access to your account by providing them with your user ID and password, provided that the Additional Users comply with the terms and conditions of this Subscriber Agreement relating to their use of your account. All data entered by you or any Additional User will automatically be available to you and all Additional Users. You and any Additional User will be able to add, edit or delete any data entered by you or any Additional User. As the account owner, you may revoke access of any Additional User at any time by changing your password. YOU AGREE TO ADVISE ANY ADDITIONAL USERS THAT THEY ARE NOT PARTIES TO THIS AGREEMENT AND YOU AGREE WITH COMPANY THAT ANY CLAIM THAT MAY BE MADE BY AN ADDITIONAL USER IS DEEMED TO BE MADE BY YOU AND WILL BE SUBJECT TO THE PROVISIONS OF THIS AGREEMENT. YOU AGREE TO INDEMNIFY AND SAVE COMPANY HARMLESS FROM AND AGAINST ANY AND ALL AMOUNTS PAYABLE BY COMPANY TO ANY ADDITIONAL USERS.

**9. Team Accounts.** For the CRM Application only, you (“**Team Leader**”) may re-designate your user account for multiple users (a “**Team Account**”). You will provide each proposed user of the Team Account (a “**Team Member**”) with a team ID and password that is used by Team Members during signup to join the Team Account. The following additional terms and conditions apply to Team Accounts:

- (a) it is the responsibility of the Team Leader and all Team Members to protect the confidentiality of the password for the Team Account;
- (b) the Team Leader is able to re-assign all appointments and tasks (except those flagged by a Team Member as private) as well as all activity assignments to another Team Member at any time;
- (c) notwithstanding Section 7, in the case of a Team Account, the Team Member data, with the exception of the user profile information, is the property of the Team Leader;
- (d) the Team Leader and each Team Member has the option to flag individual appointments and tasks as private which are never visible to other members of the team;
- (e) any Team Member can view, add, edit or delete all data entered by any other Team Member with the exception of contacts and user profile information;
- (f) any Team Member can view, add, edit, delete, import, export, or wirelessly synchronize all contact data entered by any Team Member, with the following exceptions:
  - (i) the Team Leader can deny any Team Member the ability to delete contacts;
  - (ii) the Team Leader can deny any Team Member the ability to directly request customer support to import contacts;
  - (iii) the Team Leader can deny any Team Member the ability to export contacts to a .csv format; and
  - (iv) the Team Leader can deny any Team Member the ability to wirelessly synchronize contact data to his/her mobile device (including Outlook and Mac applications). Team Members are not able to synchronize contact data using Google Sync.

- (g) if the Team Leader's account is deactivated by Company due to non-payment or for any other reason, Team Members will not be able to log in to the Team Leader's account until such time as the Team Leader's account is reactivated;
- (h) if the subscription of a Team Leader is cancelled by the Team Leader, since the Team Members will not be able to log in to the Team Account, it is the responsibility of the Team Leader to notify other Team Members of such cancellation so that each such Team Member can cancel his/her account. If a Team Member does not cancel his/her account, he/she will continue to be invoiced monthly (or annually, if applicable) until Company receives notification of such cancellation. In addition, the Team Leader shall take the necessary steps and allow the necessary time to allow the Team Members to export contact data as permitted by the Team Leader;
- (i) if the Team Leader is a Morris User and his/her account is set to the basic version, Team Members will not be able to log in to the Team Account until such time as the account of the Morris User is set back to the full version. It is the responsibility of the Team Leader to notify other Team Members of such change so that each such Team Member can cancel his/her account. If a Team Member does not cancel his/her account, he/she will continue to be invoiced monthly until Company receives notification of such cancellation. In addition, the Team Leader shall take the necessary steps and allow the necessary time to allow the Team Members to export contact data as permitted by the Team Leader;
- (j) any Team Member can send e-mail communications or produce printed marketing materials using the branding and e-mail address of any other Team Member;
- (k) any Team Member can set up a 'website lead capture' form for the capture of contact leads from his/her own website; and
- (l) if a Team Member is leaving a Team Account, it is the responsibility of the Team Leader, in his/her sole discretion, as to whether he/she decides to provide the departing Team Member with a full copy or a subset of the contact database.

**10. Templates.** As part of the CRM Application, Company makes available to users certain pre-existing forms that include standard text and spaces to fill in the blanks with customized information ("**Templates**") to simplify the creation of your marketing materials. While you retain title in all your User Content that you use in conjunction with a Template, all copyright in the Template remains with Company and Company hereby grants to you a non-exclusive, non-sublicensable, non-transferable license to use, reproduce and distribute the Template provided that the Template is properly populated with User Content (collectively a "**Completed Template**"). The use, reproduction, and distribution of any Completed Templates are solely for your own business use, including dissemination to your prospects and customers, and will not otherwise be distributed, transferred, assigned, provided, or displayed to third parties in any manner whatsoever including being posted on any computer or used in any other media.

**11. Active Listings and Document Storage.** As part of the CRM Application, you may elect to use the active business listings and document storage functions of the website. As part of such functionality, in addition to setting up contact profiles, property records, active listing details and critical dates, you may also upload relevant transaction documents to Company's storage facilities. Should you delete any active business listing, any and all transaction documents uploaded to Company's storage facilities will also automatically be deleted.

**12. Links to Third Party Websites.** The Applications may contain links to third party websites. Company does not assume responsibility for the accuracy or appropriateness of the information, data, opinions, advice, or statements contained at such websites, and when you access such websites, you are doing so at your own risk. In providing links to the other websites, Company is in no way acting as a publisher or disseminator of the material contained on those other websites and does not monitor or control such websites. A link to another website should not be construed to mean that Company is affiliated or associated with same. COMPANY DOES NOT RECOMMEND OR ENDORSE ANY HYPER-LINKS TO OR THIRD PARTY CONTENT FOUND,

ON OTHER WEBSITES. The mention of another party or its product or service in an Application should not be construed as an endorsement of that party or its product or service.

**13. Compliance with Usage Policies.** You agree that Company may from time to time establish, and later withdraw, add to or change, and that you will at all times comply with, policies, procedures, practices and limits concerning receipt of, access to and/or use of an Application, which may include, without limitation: (a) limits on the amount of time that User Content posted used on an Application will be retained by Company on its computer(s) or otherwise, (b) limits on bandwidth usage that will be allotted to you, (c) limits on storage space. You agree that Company has no responsibility or liability for the deletion or failure to post, host or store any User Content supplied, maintained or transmitted in connection with any Application or your use of it.

**14. Personal Information.** All your personal and other information will be dealt with in accordance with Company's Privacy Policy.

**15. Conduct.**

(a) You agree:

- (i) not to use the Applications in any manner which could damage, disable, overburden or impair the Applications;
- (ii) not to interfere with the security of, or otherwise abuse, the Applications, or any services, system resources, accounts, servers or networks connected to or accessible through this website or affiliated or linked sites;
- (iii) except as permitted to the Team Leader pursuant to Section 9, not to disrupt or interfere with any other person's use and enjoyment of the Applications or affiliated or linked applications or websites;
- (iv) not to upload, post or otherwise transmit any viruses or other harmful, disruptive or destructive files or computer programs that could affect Company's networks or the Applications;
- (v) not to use any robot, spider or other automatic device, or manual process to monitor or copy the web pages or the content contained in the Applications;
- (vi) not to use or attempt to use another's account, service or system without authorization from Company, or create or use a false identity on the Applications;
- (vii) not to transmit spam, chain letters, junk mail or any other type of unsolicited mass e-mail while using the Applications; and
- (viii) not to attempt to obtain unauthorized access to the Applications or portions of the Applications which are restricted from general access.

(b) In addition, you agree that you are solely responsible for actions and communications undertaken or transmitted to or for your account, and that you will comply with all applicable laws that relate to your use or activities while using the Applications.

## 16. Limitations on Liability and Disclaimers.

- (a) THE WEBSITE APPLICATION DOES NOT USE ENCRYPTION SECURITY. WHILE THE CRM APPLICATION USES ENCRYPTION SECURITY, BECAUSE OF THE USE OF THE INTERNET, COMPANY CANNOT WARRANT OR GUARANTEE THAT ANY PERSONAL INFORMATION AND TRANSACTIONS IN AN APPLICATION WILL REMAIN CONFIDENTIAL AND SECURE. THE USE OF THESE APPLICATIONS AND THE CONTENT IS AT YOUR OWN RISK AND COMPANY ASSUMES NO LIABILITY OR RESPONSIBILITY PERTAINING TO ANY CONTENT, YOUR USE OF THE APPLICATION OR THE RECEIPT, STORAGE, TRANSMISSION OR OTHER USE OF PERSONAL INFORMATION.
- (b) Company will not be responsible for any damages you or any third-party may suffer as a result of the transmission, storage or receipt of confidential or proprietary information that you make or that you expressly or implicitly authorize Company to make, or for any errors or any changes made to any transmitted, stored or received information.
- (c) Subject to the expanded rights provided to Team Members using a Team Account, you are solely responsible for the retrieval and use of the Company Content. You should apply your own judgment in making any use of any Company Content, including, without limitation, the use of the information as the basis for any conclusions.
- (d) Company will use all reasonable efforts to maintain and back up all User Content. However, Company shall have no liability whatsoever for the loss or corruption of User Content or the failure of any backups of same. As User Content is your property, you are solely responsible for insuring that you retain a copy of all User Content and backing up same in a manner that suits your requirements should you require any such backups.
- (e) TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, EACH APPLICATION AND ALL CONTENT, PRODUCTS, SERVICES AND SOFTWARE IN CONNECTION WITH EACH APPLICATION OR MADE AVAILABLE IN CONNECTION WITH AN APPLICATION IS ARE PROVIDED "AS IS" WITHOUT ANY REPRESENTATIONS, WARRANTIES, GUARANTEES OR CONDITIONS, OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES RELATING TO UNINTERRUPTED OR ERROR FREE OPERATION, AVAILABILITY, ACCURACY, COMPLETENESS, CURRENTNESS, RELIABILITY, TIMELINESS, LEGALITY, SUITABILITY, PRIVACY, SECURITY, MERCHANTABILITY QUALITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.
- (f) IN NO EVENT WILL COMPANY, ITS AFFILIATES, AGENTS, LICENSORS, SUPPLIERS, OR EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE FOR: (I) DAMAGES CHARACTERIZED AS LOST REVENUE, LOST SAVINGS OR LOST PROFITS; OR (II) INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES; HOWEVER CAUSED, REGARDLESS OF THE UNDERLYING THEORY UPON WHICH THE DAMAGES ARE BASED, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), AS A RESULT OF BREACH OF WARRANTY, STRICT LIABILITY, INDEMNITY OR UNDER ANY OTHER THEORY OF LIABILITY WHATSOEVER, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM.
- (g) IN NO EVENT WILL COMPANY, ITS AFFILIATES, AGENTS, LICENSORS, SUPPLIERS, OR EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES, BE LIABLE FOR DAMAGES OR LOSSES RELATING TO OR ARISING FROM: VIRUSES, DATA CORRUPTION, FAILED E-MAIL OR OTHER MESSAGES, TRANSMISSION ERRORS OR PROBLEMS; TELECOMMUNICATIONS SERVICE PROVIDERS; LINKS TO THIRD-PARTY WEBSITES; THE INTERNET BACKBONE; PERSONAL INJURY; THIRD-PARTY CONTENT, PRODUCTS OR SERVICES; DAMAGES OR LOSSES CAUSED BY YOU; LOSS OF USE OR LACK OF AVAILABILITY OF FACILITIES

INCLUDING COMPUTER RESOURCES, ROUTERS AND STORED DATA; LOSS OF DATA DURING SYNCHRONIZATION (OR TERMINATION OF SYNCHRONIZATION) OF SUBSCRIBERS' HAND-HELD DEVICES OR OTHER SOFTWARE WITH COMPANY'S SYSTEMS; THE USE OR INABILITY TO USE ANY APPLICATION OR THE CONTENT; ANY OTHER WEBSITE ACCESSED TO OR FROM ANY APPLICATION; OR EVENTS BEYOND THE REASONABLE CONTROL OF COMPANY, EVEN IF COMPANY OR ANY OF ITS LAWFUL AGENTS, OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM.

- (h) TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, IN NO EVENT WILL COMPANY'S, ITS AFFILIATES', AGENTS', LICENSORS', SUPPLIERS', AND THEIR RESPECTIVE DIRECTORS', OFFICERS' OR EMPLOYEES' CUMULATIVE TOTAL LIABILITY ARISING UNDER ANY CAUSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, OR OTHERWISE) BE FOR MORE THAN AN AMOUNT EQUAL TO FEES PAID BY YOU TO COMPANY IN CONNECTION WITH THE APPLICATION IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT CAUSED THE DAMAGES OR IS THE SUBJECT MATTER OF THE CLAIM PROVIDED THAT IF THE LIABILITY ARISES IN LESS THAN SIX (6) MONTHS FROM THE EFFECTIVE DATE, THE AGGREGATE LIABILITY WILL BE SIX (6) TIMES THE AVERAGE OF THE FEES PAID BY YOU IN EACH OF THE MONTHS SINCE THE EFFECTIVE DATE OF THE APPLICABLE APPLICATION.
- (i) COMPANY ASSUMES NO OBLIGATION TO UPDATE THE CONTENT FOR ANY APPLICATION. THE CONTENT FOR ANY APPLICATION MAY BE CHANGED WITHOUT NOTICE TO YOU. COMPANY IS NOT RESPONSIBLE FOR ANY CONTENT OR INFORMATION THAT YOU MAY FIND UNDESIRABLE OR OBJECTIONABLE. COMPANY DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED USE OR REPRODUCTION OF ANY PORTION OF ANY APPLICATION.

**17. Termination.** This Agreement is effective until terminated by Company, with or without cause, in Company's sole and unfettered discretion. Company may terminate this Agreement for cause with at least fifteen (15) days' notice to you if you fail to comply with any of its terms for any Application. Further, since the CRM Application is a pre-requisite for the Website Application, if this Agreement is terminated in connection with the CRM Application, the Website Application will also be terminated as of the same date. Any termination by Company shall be in addition to and without prejudice to such rights and remedies as may be available to Company, including injunction and other equitable remedies. You may cancel your subscription to any Application at any time by providing Company notice in writing (e.g., e-mail) on the understanding that (as stated above), if you cancel the CRM Application, you will also be required to cancel the Website Application. If you cancel prior to your next payment date, no payments (whether monthly, annual, or one-time) are refundable. If, for some reason (i.e., expiry date of credit card is no longer valid), Company is unable to process any automatic payment as described above, Company will use commercially reasonable efforts to contact you. If Company is unsuccessful in contacting you, Company may terminate this Agreement. If Company contacts you and you do not promptly correct the problem with your credit card, Company may terminate this Agreement with at least fifteen (15) days' notice.

**18. Indemnity.** You agree at all times to indemnify, defend and hold harmless Company, its agents, suppliers, affiliates and each of their respective directors, officers and employees against all actions, proceedings, costs, claims, damages, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by Company directly or indirectly in respect of your use or misuse of any Application or User Content, including, without limitation, any third party intellectual property infringement claims.

**19. Governing Law.** This Agreement will be governed by the laws in force in the Province of Ontario and shall be treated in all respects as an Ontario contract, without reference to the principles of conflicts of law. In the event of a dispute, we agree to submit to the exclusive jurisdiction of the Ontario courts. We expressly exclude the UN Convention on Contracts for the International Sale of Goods, and the *International Sale of Goods Act* (Ontario) as amended, replaced or re-enacted from time to time. You agree to waive any right you may have

to: (i) a trial by jury; and (ii) commence or participate in any class actions or proceedings against Company related to any Application, the Company Content or this Agreement.

**20. Interpretation.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. In this Agreement, words importing the singular number include the plural and vice versa, words importing gender include all genders; and words importing persons include individuals, sole proprietors, partnerships, corporations, trusts and unincorporated associations. All references to money amounts in this Agreement, unless otherwise specified, are in the currency of the jurisdiction in which the credit card you have identified and authorized for payment is issued.

**21. Entire Agreement.** This Agreement as it may be amended from time to time in accordance with the provisions of Section 21, any Supplemental Terms for Applications and any and all other legal notices and policies, constitute the entire agreement between you and Company with respect to the use of the Applications.

**22. Amendment and Waiver.** Company reserves the right to amend this Agreement with respect to any Application from time to time. AS A REGISTERED USER, COMPANY SHALL NOTIFY YOU OF ANY MATERIAL AMENDMENT(S) TO THIS AGREEMENT. YOU MUST AGREE TO THE AMENDMENT(S) WITHIN THIRTY (30) DAYS OF SUCH NOTICE IN ORDER TO CONTINUE USING THE APPLICATIONS. No supplement, modification or amendment to this Agreement and no waiver of any provision of this Agreement shall be binding on Company unless executed by Company in writing. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**23. Severability.** Any provision of this Agreement which is held by a court of competent jurisdiction to be illegal, invalid or unenforceable in such jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability and shall otherwise be enforced to the maximum extent permitted by law, all without affecting the remaining provisions of this Agreement or affecting the legality, validity or enforceability of such provision in any other jurisdiction.

**24. Enurement.** This Agreement shall enure to the benefit of and be binding upon each of us and our respective heirs, successors and permitted assigns. You acknowledge having read this Agreement before accepting it, having the authority to accept this Agreement and having received a copy of this Agreement.

**25. Survival.** We agree that the provisions of Sections 3, 4, 5, 6, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of this Agreement shall remain in full force and effect after the expiry or termination hereof until such time as we may mutually agree to the termination of such provisions.

**26. Compliance with Laws.** Both parties agree to, at all times, comply with applicable law.

### **Supplemental Terms for Website Application**

The terms and conditions contained in this Supplemental Terms for the Website Application (the “**Supplement**”) are specific to the IXACT Contact Website Application described in Section 1 below (the “**Website Application**”). Your use of the Website Application is governed by the Supplement and the Agreement. Capitalized terms that are not defined in the Supplement are defined in the Agreement. In the event of any conflicts or inconsistencies between the Supplement and the Agreement, the terms of the Supplement will govern and take precedence.

**1. The Application.** The Website Application enables you to create a single website from Company (the “**Agent Website**”).

**2. Selection of Functionality.** In subscribing for the use of the Website Application, Company offers you three options. You may select: (i) a version of the Website Application with full IDX functionality (IDX Professional);



a website with partial IDX functionality (IDX Standard); or a website with no IDX functionality (No IDX). A description of the features distinguishing IDX Professional from IDX Standard is set out in the Website Features List on the Company's website.

### **3. Ownership and Property Rights.**

- (a) The Agent Website contains Company Content (as defined in Section 3 of the Agreement). You agree that all the provisions dealing with Company Content in the Agreement also apply to the Company Content provided pursuant to this Supplement. You also agree to only use the Company Content as part of the Agent Website and for no other purposes whatsoever irrespective of the medium (i.e., other websites or printed materials). If there is any breach of the Agreement or this Supplement, Company may promptly terminate your use of the Website Application for cause.
- (b) You may add User Content (as defined in Section 3 of the Agreement) to the Agent Website. Company agrees that all provisions dealing with User Content in the Agreement also apply to the User Content that you provide pursuant to this Supplement. You may also customize/modify the Company Content. However, any such customization/modification shall in no way affect Company's ownership and intellectual property rights in the Company Content.

**4. Responsibility for Use of Company Content.** You acknowledge and agree that Company's making the Company Content available to you does not constitute legal, tax, accounting, real estate, financial, regulatory or other professional advice and should not be relied upon by you as appropriate for your website. It is your responsibility to determine whether the Company Content is appropriate based on your own judgment and any advice you obtain from any advisors you may retain. The Company Content is provided solely and exclusively as a convenience for general, non-specific educational and informational purposes.

**5. Domain Names.** An appropriate domain name is a required pre-condition for the use of the Website Application. You agree to notify Company whether you already have a domain name that is suitable for the Website Application or require a domain name. If you do not have a domain name for the Website Application, you hereby authorize Company to acquire one on your behalf. You also authorize Company to renew the domain name annually except as otherwise expressly stated below.

### **6. Charges and Payments.**

- (a) **Use of Credit Card.** You agree that payment for the use of the Website Application and all other charges due and payable hereunder will be made to Company through automatic charges taken from the credit card that you identified and authorized for payments pursuant to the Agreement.
- (b) **MLS IDX Set-up Charge.** There is a one time charge for the set-up of MLS IDX that Company will attempt to have approved upon the initiation of the approval process for the use of MLS IDX. If the charge is not approved before the MLS IDX approval process is completed, Company will have the option in its sole discretion to either (i) discontinue the MLS approval process, (ii) suspend the MLS IDX listings feed, or (iii) suspend the Agent Website.
- (c) **Domain Name Registration.** There is an annual charge for domain name registration. Company will attempt to have approved the first year's registration fee immediately upon your request for a new domain name. If the charge is not approved, Company will have the option to suspend the Agent Website. In subsequent years, the amount must be approved no more than one (1) month in advance of the anniversary date that the domain name was first issued. In subsequent years, if payment is not approved within ten (10) days of the domain name registration date, your domain name registration will expire. If you elect to discontinue the use of the domain name, you must give Company forty-five (45) days' written prior to your domain name registration anniversary date. If you already have an appropriate domain name, the provisions of this section (c) do not apply.

- (d) **IDX Service Usage Charges.** There is a monthly charge for integrating IDX listings into the Agent Website. The first monthly charge will be invoiced in arrears and pro-rated based on a thirty (30) day month. For subsequent months, payment must be approved in advance up to fifteen (15) days prior to the first day of the next month. If the charge is not approved, Company has the option to suspend your IDX feed. If you wish to cancel your IDX feed and discontinue paying the monthly charge, you must either switch your IDX package to 'No IDX', or provide written notice at least twenty (20) days prior to the first day of the next month.
- (e) **MLS Pass-Through Fees.** Company acknowledges that your MLS may charge licensing and/or access fees in connection with the provision of your IDX that Company will collect from you and submit to your MLS. Company does not mark up these pass-through fees. Payment must be approved in advance up to fifteen (15) days prior to the first day of each month. If the charge is not approved, Company has the option to suspend your IDX feed. If you wish to cancel your IDX feed and discontinue paying your MLS pass-through fees, you must either switch your IDX package to 'No IDX', or provide written notice at least twenty (20) days prior to the first day of the next month. If your MLS charges you directly for IDX fees, you are solely responsible for paying these fees directly to your MLS in a timely manner. If you do not pay your MLS in a timely manner, your IDX feed may be suspended.
- (f) **Refunds.** None of the payments due hereunder are refundable.

**7. Conduct.** You agree not upload, post, display or otherwise transmit any User Content:

- (a) that is inapplicable to a professional business website;
- (b) that is false or misleading in any respect;
- (c) that is defamatory, obscene or otherwise offensive;
- (d) that constitutes the infringement of any intellectual property rights of any third party without that party's written consent including any patent, trademark, trade secret, copyright or other proprietary rights of such third party;
- (e) that you do not have all necessary rights to post or transmit (including, without limitation, any information learned as part of any prior or existing employment relationships or under any nondisclosure agreements);
- (f) that constitutes the violation of any right of publicity or privacy right; or
- (g) about children or any third party without their consent (or a parent's or guardian's consent in the case of a minor).

**8. Responsibilities in Connection with the Website.**

- (a) **Operation and Control.** You understand and agree that you, and not Company, are responsible for the operation and control of the website and that legal liability can arise from, and legal duties can apply to, publishing or allowing the posting of any User Content on the website or otherwise operating or controlling the website. You further understand that you (with the assistance of professional advisors that you may decide to retain), and not Company, are exclusively responsible for, and Company will have no duty or responsibility whatsoever for providing to you or for the website appropriate terms of service that cover such items as terms of website use, legal terms including: (i) disclaimers; (ii) terms purporting to limit, exclude or shift liability, responsibility or risk; (iii) proprietary rights notices; (iv) an acceptable use policy; and (v) a privacy policy. You may not in any way identify Company as the party responsible for the website.

- (b) **Name and Trademarks.** You shall not use the name or trademarks of Company on the website without the prior written consent of Company. In particular, you shall not use in any third-party communications, on the website or in any publicity of any kind the actual or similar name and/or trademarks of Company except with, and subject to the terms of, the express written consent of Company in each case. However, you agree that Company reserves the right to include on the website reasonable branding that it is involved in making the website available (e.g., Powered by IXACT Contact, etc.) and such disclaimers, legends and intellectual property rights notices as it may deem appropriate or desirable.

**9. Suspension & Deletion.** Company reserves the right to suspend the Agent Website if at least one of the following conditions is met at least thirty (30) days subsequent to creation:

- (a) 'Demo' IDX listings are displayed on the Agent Website.
- (b) The Agent Website does not resolve to a domain name owned by you.

At least fifteen (15) days written notice will be provided prior to suspending the Agent Website.

Company reserves the right to permanently delete the Agent Website once the site has been suspended for at least thirty (30) consecutive days for the reasons described above. At least fifteen (15) days written notice will be provided prior to permanently deleting the Agent Website.

**10. Monitoring of Website.** Company shall be under no obligation, but does reserve the right (without notice), to monitor, pre-screen, block, remove, render inaccessible and otherwise regulate and address any website or User Content.

**11. Disclaimer.** In no event will Company be responsible for any legal wrong or intellectual property infringement that might be committed in connection with the User Content, nor for the appropriateness, accuracy, sufficiency, correctness, legality, veracity, completeness, or timeliness of any use of, activity relating to User Content that may be posted to, linked to or otherwise available on or through the use of the website.

**12. Website Performance.** There are no representations, warranties or conditions of availability, response-times, performance or quality of the website or some or all of its features. You understand and agree that there will be times that persons seeking to visit the website might not be able to access it or use some or all of its features and that availability, response-times, performance or quality might not be to their satisfaction.

**13. Survival.** The parties agree that the provisions of Sections 4, 6(f), 11 and 13 of this Supplement shall remain in full force and effect after the expiry or termination of the Agreement or the Supplement until such time as the parties may mutually agree to the termination of such provisions.