

WEBSITE Subscriber Agreement (Terms of Service)

IMPORTANT! YOUR ACCESS TO AND USE OF THIS WEBSITE IS SUBJECT TO THIS SUBSCRIBER AGREEMENT. CAREFULLY READ ALL OF THE FOLLOWING TERMS AND CONDITIONS BEFORE PROCEEDING. THIS WEBSITE SUBSCRIBER AGREEMENT (THE “**AGREEMENT**”) IS AN AGREEMENT BETWEEN YOU (“**YOU**”) AND IXACT CONTACT SOLUTIONS INC. (THE “**COMPANY**”). “**WE**” AND “**US**” MEANS BOTH YOU AND COMPANY. THE EFFECTIVE DATE OF THIS AGREEMENT IS WHEN YOU ACCEPT OR ARE DEEMED TO ACCEPT THIS AGREEMENT IN ACCORDANCE WITH THE PROCEDURE SET OUT IN THIS AGREEMENT (THE “**EFFECTIVE DATE**”).

REGISTERING AS A USER. YOUR CHECKING THE “I AGREE” BOX BELOW, IS THE EQUIVALENT OF YOUR SIGNATURE AND INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS AND THAT YOU INTEND TO BE LEGALLY BOUND BY THEM.

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 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 user registration process. In registering for the user account, you agree to submit true, up to date and complete information and promptly update such information should it change. 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 registration information is true, up to date and complete or correct any inaccurate or incomplete information, Company may discontinue your account.

2. User ID and Password. Your e-mail address is your user ID. Upon registration, you will receive a password. You will not disclose your password to any third party and will be responsible for keeping your password confidential. You are entirely responsible for any and all activities and charges that are incurred through the use of your password, and any claims, liability, damages, losses and costs (including legal fees) resulting from the unauthorized use of your password. You agree to immediately notify Company of any unauthorized use of your password 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 and access to or unauthorized use of this website by anyone using your password.

3. Ownership And Copyright. Other than your information, data, databases, graphics, video, text, files and other materials provided or submitted by you (“**User Data**”), you acknowledge that any and all information, content, reports, data, databases, Templates (as defined below), graphics, interfaces, web pages, text, files, software, services, product names, company names, trade-marks, logos and trade names contained on this website (collectively the “**Content**”) including the manner in which the Content is presented or appears and all information relating thereto, are the property of Company, or its licensors as indicated, as the case may be.

4. Payment Terms. You agree that payment for the use of this website will be made through automatic charges taken from the credit card that you identify and authorize for payments. Payments will start from the date that the free trial period ends. Payments will continue to be processed on the same date each month except if such day is a statutory holiday in Ontario or a weekend which shall result in the deferment of payment to the next business day. Any one-time charges that you incur will be taken on the next business day, except for smartphone Wireless Synchronization set-up/license fees which will be processed the day after your Free Trial period has ended.

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

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

- (a) distribute the Content for any purpose including without limitation compiling an internal database, redistributing or reproduction of the 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 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 that would infringe or otherwise prejudice the proprietary rights of Company or its licensors or allow any third-party to access the Content. The restrictions set out in this Agreement shall not apply to the limited extent the restrictions are prohibited by applicable law.

7. User Data. All your User Data that you upload to the website 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 Data 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 Data 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. Company will not use your User Data for any purpose other than providing, managing and administering the services provided to you through your use of this website. 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 Data provided to Company.

8. User Teams. As the owner of your account you may grant other users access to your account by providing them with your user ID and password. All data entered by any user of your account will automatically be available to all other account users. Any user will be able to add, edit or delete any data entered by any other user of your account. As the account owner, you may revoke access of any other user of your account at any time by changing your user ID and/or your password. ALL ADDITIONAL USERS OF YOUR ACCOUNT ARE ALSO IN ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS FOUND IN THIS SUBSCRIBER AGREEMENT AND ARE LEGALLY BOUND BY THEM.

9. Templates. As part of the Services, 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 Data 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 Data (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.

10. Links to Third Party Websites. This website may contain links to other 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 OF THE CONTENT, INCLUDING WITHOUT LIMITATION, ANY HYPER-LINKS TO OR CONTENT FOUND, ON OTHER WEBSITES. The mention of another party or its product or service on this website should not be construed as an endorsement of that party or its product or service.

11. Personal Information. All your personal and other information will be dealt with in accordance with Company's Privacy Policy the terms of which you hereby acknowledge and accept and which are incorporated into and form part of this Agreement.

12. Conduct. You agree:

- (a) not to use this website in any manner which could damage, disable, overburden or impair this website;
- (b) not to interfere with the security of, or otherwise abuse, this website, or any services, system resources, accounts, servers or networks connected to or accessible through this website or affiliated or linked sites;
- (c) not to disrupt or interfere with any other person's use and enjoyment of this website or affiliated or linked sites;
- (d) not to upload, post or otherwise transmit on this website any viruses or other harmful, disruptive or destructive files or computer programs;
- (e) not to use any robot, spider or other automatic device, or manual process to monitor or copy the web pages or the content contained at this website;
- (f) 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 this website;
- (g) not to transmit on this website spam, chain letters, junk mail or any other type of unsolicited mass e-mail;
- (h) not to attempt to obtain unauthorized access to this website or portions of this website which are restricted from general access; and
- (i) 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 on this website.

13. Limitations on Liability and Disclaimers.

- (a) ALTHOUGH THIS WEBSITE USES ENCRYPTION SECURITY, BECAUSE OF THE USE OF THE INTERNET, COMPANY CANNOT GUARANTEE THAT ANY PERSONAL INFORMATION AND TRANSACTIONS ON THIS WEBSITE WILL REMAIN CONFIDENTIAL AND SECURE. THE USE OF THIS WEBSITE AND THE CONTENT IS AT YOUR OWN RISK AND COMPANY ASSUMES NO LIABILITY OR RESPONSIBILITY PERTAINING TO THE CONTENT, YOUR USE OF THE WEBSITE OR THE RECEIPT, STORAGE, TRANSMISSION OR OTHER USE OF YOUR 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) You are solely responsible for the retrieval and use of the Content. You should apply your own judgment in making any use of any Content, including, without limitation, the use of the information as the basis for any conclusions.
- (d) EXCEPT TO THE EXTENT THE FOLLOWING DISCLAIMERS ARE HELD TO BE LEGALLY INVALID, THIS WEBSITE AND ALL CONTENT, PRODUCTS, SERVICES AND SOFTWARE ON THIS WEBSITE OR MADE AVAILABLE THROUGH THIS WEBSITE 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 AS TO UNINTERRUPTED OR ERROR FREE OPERATION, AVAILABILITY, ACCURACY, COMPLETENESS, CURRENTNESS, RELIABILITY, TIMELINESS, LEGALITY, SUITABILITY, PRIVACY, SECURITY, MERCHANTABLE QUALITY, TITLE, NON-

INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.

- (e) IN NO EVENT WILL COMPANY, ITS AFFILIATES, AGENTS, LICENSORS, SUPPLIERS, OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, LOST PROFITS OR LOST SAVINGS OR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED EVEN IF COMPANY OR ANY OF ITS LAWFUL AGENTS OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM.
- (f) IN NO EVENT WILL COMPANY, ITS AFFILIATES, AGENTS, LICENSORS, SUPPLIERS, OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES, BE LIABLE FOR DAMAGES OR LOSSES RESULTING 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 WITH COMPANY'S SYSTEMS; THE USE OR INABILITY TO USE THIS WEBSITE OR THE CONTENT; ANY OTHER WEBSITE ACCESSED TO OR FROM THIS WEB SITE; 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.
- (g) IN NO CASE WILL COMPANY'S, ITS AFFILIATES', AGENTS', LICENSORS', SUPPLIERS', AND THEIR RESPECTIVE DIRECTORS', OFFICERS' AND 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 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.
- (h) COMPANY ASSUMES NO OBLIGATION TO UPDATE THE CONTENT ON THIS SITE. THE CONTENT ON THIS SITE 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 THE WEBSITE.

14. Termination. This Agreement is effective until terminated by Company, with or without cause, in the Company's sole and unfettered discretion. The Company may terminate this Agreement without notice to you if you fail to comply with any of its terms. Any such termination by the Company shall be in addition to and without prejudice to such rights and remedies as may be available to the Company, including injunction and other equitable remedies. You may cancel your subscription to this website at any time by providing Company notice in writing (e.g., e-mail). If you cancel prior to your next payment date, Company will not refund to you any unused portion of your monthly payment. One-time payments such as wireless sync set-up/license fees and bulk email purchases are also non-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 or upon such contact, you do not correct the problem with your credit card, Company may cancel your subscription.

15. Indemnity. You agree at all times to indemnify, defend and hold harmless Company, its agents, suppliers, affiliates and their respective directors 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:

- (a) any information or other content you provide on or through this website or by e-mail or other correspondence; or
- (b) your use or misuse of the Content or this website, including without limitation infringement claims.

16. Governing Law. The Company, this website and the Content (excluding linked websites or content) are physically located within the Province of Ontario, Canada. 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 this website, the Content or the Services or this Agreement.

17. 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.

18. Entire Agreement. This Agreement as it may be amended from time to time in accordance with the provisions of Section 19, and any and all other legal notices and policies on this website, constitute the entire agreement between you and the Company with respect to the use of this website and the Content.

19. Amendment and Waiver. Company reserves the right to amend this Agreement from time to time. AS A REGISTERED USER, COMPANY SHALL NOTIFY YOU OF ANY MATERIAL CHANGES TO THIS AGREEMENT BY E-MAIL SENT TO THE ADDRESS YOU HAVE PROVIDED TO COMPANY FOR YOUR ACCOUNT. IF YOU CONTINUE TO USE THE SERVICE ONCE YOU HAVE BEEN NOTIFIED OF THE CHANGES TO THIS AGREEMENT, YOU WILL BE DEEMED TO HAVE ACCEPTED THOSE CHANGES. 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.

20. 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.

21. 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.

22. Survival. We agree that the provisions of Sections 3, 4, 5, 6, 11, 13, 15, 16, 17, 18, 20, 21 and 22 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.

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