

TERMS OF USE

THIS TERMS OF USE AGREEMENT (THE "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU AND ANY COMPANY YOU REPRESENT (COLLECTIVELY, "MEMBER") AND ICIX, NORTH AMERICA LLC ("ICIX") REGARDING THE ICIX EXCHANGE, A RESTRICTED WEBSITE (THE "RESTRICTED WEBSITE") AND THE ASSOCIATED MEMBERSHIPS, APPLICATIONS, AND SERVICES PROVIDED BY ICIX UNDER THIS AGREEMENT ("SERVICES"). PLEASE READ THE AGREEMENT CAREFULLY BEFORE CONTINUING. BY CLICKING THE "I ACCEPT" BUTTON YOU AND ANY COMPANY YOU REPRESENT AGREE TO FOLLOW AND BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND YOUR COMPANY TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST SELECT THE "I DECLINE" BUTTON AND YOU MAY NOT REGISTER TO USE THE RESTRICTED WEBSITE.

1. ICIX License. Subject to the terms of this Agreement, ICIX grants to Member during the Subscription Term the nontransferable, nonexclusive worldwide right to use and permit those individuals authorized by Member or on Member's behalf ("Users") to use the Services ordered and paid by Member on the Restricted Website and any materials ("Materials") provided or disclosed to Member by ICIX or its third party providers ("Third Party Providers") in the course of performing Services in connection with the Restricted Website. The rights granted to Member in this Agreement are subject to all of the following terms, conditions and restrictions: (i) Member shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Restricted Website or any Materials, available to any third party other than an authorized User; (ii) Member shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Restricted Website or Materials or access the Restricted Website or Materials in order to build a similar or competitive product or service; (iii) except as expressly stated herein, no part of the Restricted Website or Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means to, including but not limited to electronic, mechanical, photocopying, recording, or other means; (iv) Member agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Restricted Website; (v) Member acknowledges and agrees that ICIX or its Third Party Providers shall own all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Restricted Website and the Materials and any suggestions, enhancement requests, feedback, recommendations or other information provided by Member or any other party relating to the Restricted Website or the Materials; (vi) Member shall not disclose any review of the Restricted Website to any third party without ICIX's prior written approval; (vii) Member shall not use any e-mail addresses and other Member contact information provided on the Restricted Website for marketing or advertising purposes; and (viii) Member shall not post, transmit, link to, or otherwise distribute any inappropriate, profane, defamatory, obscene, indecent or unlawful material or information.

2. Member License. Member grants to ICIX and its Third Party Providers the non-exclusive, worldwide right to copy, adapt, transmit, communicate, display, distribute and create compilations and derivative works (a) any data, information or other materials, provided to ICIX by Member in the course of using the Restricted Website ("Member Data") solely to the extent necessary to provide the Restricted Website and Materials to other Members, and (b) any trademarks that Member provides ICIX for the purpose of including them Member's user interface of the Restricted Website ("Member Trademarks"). Member acknowledges and agrees that Member Data may be transferred outside of the country or other jurisdiction where other Members or Users are located. In addition, Member shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and copyright of all Member Data.

3. Privacy of Member Data. Notwithstanding the foregoing, ICIX's obligations regarding identification and other information concerning Member and Member's Users shall be governed by the ICIX Online Privacy Policy available at <https://icix.com/secure/assets/user/files/OnlinePrivacyPolicy.pdf>

4. Billing and Payment. Member agrees to pay in advance for all Services ordered on the Restricted Website. All fees under this Agreement are nonrefundable. ICIX's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Member shall be responsible for payment of all such taxes, levies, or duties, even if such amounts are not listed by ICIX. Member will provide ICIX with valid and updated credit card information on the Restricted Website and authorizes ICIX to bill such credit card (i) at the time that Member orders Services, for all Services ordered on the Restricted Website, and (ii) at the time of any renewal, for the amount charged for any renewal Subscription Term(s) as set forth in Section 5. If Member makes payment using a method other than a credit card, ICIX reserves the right to reject such other method or charge an additional processing fee.

5. Term and Termination. The term of this Agreement shall become effective upon Member's first acceptance of these terms by choosing the "I ACCEPT" option on the Restricted Website and shall continue for the period of time selected and paid by Member on the Restricted Website (the "Subscription Term"). Member's subscription to the Restricted Website or Services will renew upon Member's payment of the applicable subscription renewal fees, for a renewal Subscription Term selected and paid by Member on the Restricted Website prior to the expiration of the initial Subscription Term or any renewal Subscription Term. In the event that any Subscription Term expires before Member makes a payment for a renewal Subscription Term, ICIX reserves the right to charge: (a) a proportionate fee for the elapsed time period during which the Subscription Term was expired and (b) a reactivation fee to process the renewal. In the event of any breach of this Agreement by either party, other than Member's failure to make payment as set forth herein, the non-breaching party shall have the right to terminate this Agreement for cause if such breach has not been cured within 30 days of written notice

from the non-breaching party specifying the breach in detail and, if ICIX is the non-breaching party, ICIX may terminate Member's password, account, access to or use of the Restricted Website. At Member's request, within 30 days of termination of this Agreement, provided Member is not in breach of the Agreement, ICIX will make available to Member a file of the Member Data then in its possession for a nominal handling fee. Member agrees and acknowledges that ICIX has no obligation to retain Member Data and that such Member Data may be irretrievably deleted after 30 days following the termination of this Agreement or if Member's account is 30 days or more past due. The following provisions shall survive any termination of this Agreement: Sections 2, 5, 10, 11, 12, and 15.

6. Third Party Web Sites. If Member enters into correspondence with, purchases goods or services from, or participates in promotions of advertisers or sponsors other than ICIX through the Restricted Website, any such activity, and any terms, conditions, warranties or representations associated with such activity, is governed solely by the terms between Member and the applicable third party. ICIX shall have no liability or obligation for, and does not endorse or accept any responsibility for, the contents or use of third party web sites or any transactions completed with third parties. ICIX may provide such links only as a convenience, and the inclusion of any link does not imply endorsement by ICIX of the linked web site, notwithstanding the inclusion on such site of the trademarks of ICIX or its Third Party Providers.

7. Member Support Services. For the Subscription Term ICIX shall provide assistance to Member by telephone, e-mail or online chat during normal business hours (6AM to 5 PM Pacific Time), in connection with any problem or advise that may arise out of using the Restricted Website, Materials or Services supplied by ICIX. Defects encountered by Member and confirmed by ICIX, will be corrected at no additional charge. This provision does not provide for the addition of new functionality to the Restricted Website, which may be considered desirable by the Member, or for improvement, as opposed to a correction on the Restricted Website. ICIX shall review all requests for improvements and new functionality, but ICIX shall have no obligation to provide any modifications to the Restricted Website.

8. Representations & Warranties. Each party represents and warrants that it has the power and authority to enter into this Agreement. ICIX warrants that (a) it will provide the Restricted Website and all Services in a manner consistent with generally accepted industry standards, and (b) the Restricted Website will perform substantially in accordance with its online documentation under normal use.

9. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8 ABOVE, ICIX AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTIES, AND CONDITIONS WITH REGARD TO THE RESTRICTED WEBSITE SERVICE, THE MATERIALS, AND THE SERVICES INCLUDING BUT NOT LIMITED TO ANY IMPLIED REPRESENTATIONS,

WARRANTIES, GUARANTIES, AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND QUALITY OF SERVICE. ICIX AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF THE RESTRICTED WEBSITE, THE MATERIALS, OR THE SERVICES OR THE RESULTS MEMBER MAY OBTAIN BY USING THE RESTRICTED WEBSITE, THE MATERIALS, OR THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ICIX AND ITS THIRD PARTY PROVIDERS DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE RESTRICTED WEBSITE OR MATERIALS WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE; (B) THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL MEMBER PURCHASES OR OBTAINS THROUGH THE RESTRICTED WEBSITE WILL MEET MEMBER'S REQUIREMENTS; OR (C) THE RESTRICTED WEBSITE, MATERIALS, OR THE SYSTEMS THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MEMBER ACKNOWLEDGES THAT NEITHER ICIX NOR ITS THIRD PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE RESTRICTED WEBSITE AND MATERIALS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ICIX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY ICIX, THE RESTRICTED WEBSITE, THE SERVICES, AND THE MATERIALS ARE PROVIDED TO MEMBER ON AN "AS IS" BASIS.

10. Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ICIX OR THE THIRD PARTY PROVIDERS EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM MEMBER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY OR THE THIRD PARTY PROVIDERS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE RESTRICTED WEBSITE, REGARDLESS OF CAUSE, WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE OR OTHER TORTIOUS ACTION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR THE THIRD PARTY PROVIDER HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 10 SHALL NOT APPLY IN THE EVENT OF MEMBER'S BREACH OF SECTION 1, TO EITHER PARTY'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 11 BELOW, OR IN THE EVENT OF EITHER PARTY'S BREACH OF SECTION 12 BELOW. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO MEMBER.

11. Member Indemnities. Member shall defend and indemnify ICIX and its Third Party Providers against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs)

finally awarded against ICIX or its Third Party Providers by a court of competent jurisdiction arising out of or in connection with a claim by a third party (i) alleging that the Member Data or the Member Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Member's breach of Section 13.

12. Confidential Information. Each party may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; (d) is independently developed by the other party without use of or reference to the other party's Confidential Information. The parties agree to use all reasonable care to prevent disclosure of the other party's Confidential Information to any third party. Notwithstanding the foregoing, Member acknowledges and agrees that ICIX may disclose Member's Confidential Information to its Third Party Providers solely to the extent necessary to provide the Restricted Website or Services under this Agreement, provided that ICIX has a non-disclosure agreement in place with such Third Party Provider that protects such Confidential Information against disclosure in a manner no less protective than this Agreement. This Section 12 constitutes the entire understanding of the parties and supersedes all prior or contemporaneous agreements, representations or negotiations, whether oral or written, with respect to Confidential Information.

13. Member's Responsibilities. Member will comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Restricted Website, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data from locations other than the location from which ICIX controls and operates the Restricted Website. Member will ensure that any use of the Restricted Website by Member's Users is in accordance with the terms of this Agreement.

14. Notices. ICIX may give notice by means of a Member Notification on the Restricted Website; electronic mail to Member's e-mail address on record in ICIX's account information, or by written communication sent by first class mail or pre-paid post to Member's address on the Restricted Website. Member may give notice to ICIX at any time by letter sent by confirmed facsimile to ICIX License Administration, fax number 650-742-1037 or by letter delivered first class mail to ICIX at One Tower Place, Suite 300, South San Francisco, CA 94080. All notices shall be deemed to have been given five days after mailing (if sent by first class mail) or 24 hours after sending by confirmed facsimile.

15. General provisions. Any action related to this Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules or any other jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Restricted Website shall be subject to the exclusive jurisdiction of the state and federal courts located in Delaware. This Agreement, together with any applicable Registration Form, represents the parties' entire understanding relating to the use of the Restricted Website and supersedes any prior or contemporaneous, conflicting or additional, communications. ICIX reserves the right to change the terms and conditions of this Agreement or its policies relating to the Restricted Website at any time, and such changes will be effective upon notice to Member. Member's continued use of the Restricted Website after any such changes shall constitute Member's consent to such changes. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between ICIX and Member as a result of this Agreement or use of the Restricted Website. Member may not assign this Agreement without the prior written approval of ICIX. Any purported assignment in violation of this section shall be void. ICIX reserves the right to use Third Party Providers in the provision of the Restricted Website, Materials, or Services hereunder. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. Any rights not expressly granted herein are reserved by ICIX.

Last updated July 27, 2012