

Triangle MLS, Inc.

Licensed Home Inspector Subscriber Agreement

This agreement is a binding contract and includes terms limiting your legal rights and TMLS's liability to you. Consult your attorney before signing if you do not understand any of the terms here.

This AGREEMENT is made and entered into by Triangle MLS, Inc. ("TMLS"), with offices at 111 Realtors Way, Cary, NC 27513; and _____ ("Subscriber," a natural person), affiliated with _____ (firm name), with offices at _____.

DEFINITIONS AND USAGE

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below.

Brokerage Subscribers: All brokerage and appraisal firms and their affiliated licensees who participate in TMLS (as those terms are defined in the TMLS Policies) for purposes of making and receiving offers of compensation or performing valuations of real property subject to licensure by the State of North Carolina. All Brokerage Subscribers are also Other Subscribers, as that term is used in this Agreement.

Other Subscribers: All participants and subscribers of TMLS (as those terms are defined in the TMLS Policies) not party to this Agreement, including their employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate agents or appraisers).

REALTOR®: A member of the National Association of REALTORS®.

Saved Information: Information that Subscriber stores in the TMLS System for his own later use that is not intended by him/her to be available to TMLS's Other Subscribers, including client and contact information.

Showing Scheduling System: The system, presently operated on TMLS's behalf by Centralized Showing Service (or CSS), through which many Other Subscribers schedule appointments and showings relating to properties listed for sale in the TMLS System.

Subscriber Contribution: All data that the Subscriber submits, contributes, or inputs in the Showing Scheduling System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

TMLS Affiliates: TMLS Affiliates means TMLS and its officers, directors, employees, agents, representatives, licensors, and shareholders.

TMLS Policies: TMLS's bylaws, rules and regulations, and policies and procedures adopted by TMLS's board of directors or authorized delegates, as TMLS amends them from time to time.

TMLS Service: The services TMLS provides to Subscriber under this Agreement and similar services TMLS provides to third parties under similar agreements.

TMLS System: The aggregate of all software, hardware, and telecommunications systems that TMLS maintains in order to make access to real estate listing and other related information available only to Brokerage Subscribers.

2. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

(a) Wherever the term "including" is used, it means "including, but not limited to."

(b) The singular and plural numbers and masculine, feminine, and neuter genders of words are interchangeable.

(c) Wherever the term "law" is used, it means all statutes, regulations, and common law, both state and federal, as they are amended. Without limiting the generality of the foregoing, "law" expressly includes all state and federal fair housing statutes and regulations.

TMLS'S OBLIGATIONS

3. TMLS shall provide one unique user ID and any other required access information for Subscriber to use the Showing Scheduling System. The user ID and password will provide Subscriber access to all data and functions in the TMLS Service to which Subscriber is entitled under the TMLS Policies. TMLS makes no warranties, however, that the TMLS Service will be available at all times. Subscriber may not share Subscriber's ID, password, access technology (such as a lockbox key), or other access information with any other person (whether such other person is in the same firm as the Subscriber or not), under any circumstances. Subscriber is not entitled to any access to the TMLS System or any of the real estate listing data available on it. Subscriber has no other rights associated with Brokerage Subscribers, or REALTOR® association membership.

SUBSCRIBER ACKNOWLEDGMENTS

4. **Modifications to service.** TMLS may, but is not required to, modify the TMLS Service, including removing information and making additional information available, and adding and removing system functions. Certain products and services made available in conjunction with the TMLS Service may be subject to agreements other than this Agreement and may require payment of additional fees.

5. **Editorial control.** TMLS is not required to, and assumes no responsibility to, review, edit, or exercise editorial control over the Subscriber Contribution or the content submitted to the TMLS Service by Other Subscribers; use of either is subject to the exclusions of warranties and limitations of liabilities set forth in this Agreement. The foregoing notwithstanding, TMLS may take any steps necessary in its judgment, including deleting the Subscriber Contribution or portions thereof, to avoid or remedy any violation of law, breach of the TMLS Policies or infringement of intellectual property right.

6. **Conditions of service.** Subscriber must at all times hold an active home inspector license in good standing from the North Carolina Home Inspector Licensure Board (NCHILB); TMLS may regard the listing of licensees on the NCHILB web site as authoritative for purposes of assessing Subscriber's eligibility under this paragraph. Subscriber may not be a REALTOR® (REALTORS® seeking inspector access must join the MLS by affiliating with an MLS participating broker or appraiser).

7. **Firm-wide subscription.** While Subscriber is a licensed home inspector subscriber of TMLS, each licensed home inspector affiliated (a) with the home inspection firm with which Subscriber is affiliated and (b) with an office of that firm located in Alamance, Caswell, Chatham, Durham, Franklin, Granville, Halifax, Harnett, Johnston, Lee, Nash, Orange, Person, Vance, Wake, or Warren County in North Carolina, must also be a licensed home inspector subscriber of TMLS.

8. **Saved Information.** Saved Information may not always be available to Subscriber and may become available to unauthorized persons. TMLS is not liable for unauthorized access to or loss of Saved Information.

9. **Property owner and listing broker determinations.** Though TMLS is providing Subscriber access to the TMLS Service and the Showing Scheduling Service, there is no guarantee that a particular property will be accessible to Subscriber as a result. Listing brokers discuss appointment and access options with property owners, who may elect not to permit automated scheduling and access through the Showing Scheduling System or the TMLS Service. Listing brokers may prefer to manage their relations with clients through means other than the Showing Scheduling System or the TMLS Service (including direct contact with the listing broker), and thus may not permit automated scheduling and access through the TMLS Service.

10. **Disclosure to third parties; government.** TMLS reserves the right to distribute to third parties certain information about Subscriber, including Subscriber's name and business address, phone number and email address. TMLS reserves the right to distribute to third parties aggregated information about Subscriber's and Other Subscribers' use of the TMLS Service, but not about Subscriber's use specifically. Subscriber acknowledges that TMLS may provide government agencies access to the TMLS Service at any time in TMLS's sole discretion.

11. **Priority of agreements and TMLS Policies.** Subscriber's access to the TMLS Service is subject at all times to the limitations set out in the TMLS Policies. In the event of an apparent conflict between the TMLS Policies and this Agreement, Subscriber's obligations and rights shall be determined, in order of precedence, by the TMLS Policies and by this Agreement.

SUBSCRIBER'S OBLIGATIONS

12. **Use limited.** Subscriber shall use the TMLS Service solely for the purpose of performing professional home inspections under Subscriber's license from the NCHILB. This subscription is personal to Subscriber; s/he may not use any lockbox key or access information to provide access to a property to any person but Subscriber him- or herself, unless the other person is accompanying the Subscriber, and the other person's presence is required for the purpose of inspecting the home on behalf of the Subscriber's client. Such other persons may include inspectors under the Subscriber's supervision or training, but not any potential buyer of the property, the general public or any Other Subscriber.

13. **Liability.** Subscriber is liable to the property's owner for any damage caused by the Subscriber's misconduct or negligence. The Subscriber is liable for actions of other persons s/he admits to a property as if the Subscriber had committed those actions him- or herself. Subscriber is liable to the property's owner for any damage or losses resulting from Subscriber's failure to re-secure the property. Subscriber will indemnify TMLS and the seller's and buyer's brokers for any defense costs and liability allegedly arising from these causes.

14. **Security.** If Subscriber accesses a property using the TMLS Service, Subscriber must ensure that s/he leaves it in a state of security at least as great as when s/he arrived. Subscriber must notify the listing broker before Subscriber leaves the premises if the property was not secured when Subscriber arrived.

15. **Insurance.** Subscriber shall maintain insurance and bonding at least as comprehensive and with limits at least as high as required by the version of North Carolina Administrative Code (NCAC), Section 11 NCAC 08 .1006, in effect on October 1, 2013. In the event coverage limits in NCAC are revised downward by the state, the higher requirements in effect on October 1, 2013, shall apply to this policy; in the event the provisions of NCAC are revised upward by the state, the higher requirements will be applicable to Subscriber.

16. **Appropriate advertising.** Subscriber may advertise his or her affiliation with TMLS subject to these requirements:

a. Subscriber may describe him- or herself as a "Licensed Home Inspector Subscriber of Triangle MLS" or as a "Triangle MLS Licensed Home Inspector Subscriber."

b. Subscriber may *not* use the Triangle MLS logo in conjunction with his or her marketing or that of his or her firm.

c. Subscriber may *not* claim to be a REALTOR® or use the "REALTOR®" marks.

d. Subscriber may *not* claim to be a "member," "participant," or "subscriber" (except as provided above) of Triangle MLS.

e. Subscriber may *not* use this agreement to claim any affiliation with any local REALTOR® association or board, the North Carolina Association of REALTORS® or the National Association of REALTORS®.

17. **Confidentiality.** Subscriber shall maintain the confidentiality of his/her user ID and password; Subscriber shall not provide his/her ID and password to any third party. To maintain the confidentiality of all user IDs, passwords and the TMLS Service, Subscriber shall take the greater of reasonable care or the care it takes to protect its own confidential information. Failure to comply with this provision will result in a significant fine, as set forth in the TMLS Policies. Subscriber may disclose information confidential under this Agreement if, and to the extent, the order of a court or other tribunal with jurisdiction requires disclosure; provided however, Subscriber first gives reasonable notice to TMLS to permit TMLS to seek a protective order.

18. **Equipment.** Subscriber shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software necessary for Subscriber's use of the TMLS Service.

19. **Subscriber Contribution.** When making a Subscriber Contribution to the TMLS Service, Subscriber warrants that the information submitted complies with the TMLS Policies in all respects, including with regard to (a) required data fields; (b) format of submission; (c) permitted and required data types; and (d) procedures for submission. Subscriber warrants that the Subscriber Contribution does not infringe or violate any patents, copyrights, trademarks, trade secrets or other proprietary rights of any third party; and that there is no claim, litigation, or proceeding pending or threatened with respect to the Subscriber Contribution.

FEES AND PAYMENT TERMS

20. **Applicable fees.** Subscriber shall pay the fees set forth in TMLS's official Schedule of Fees, which TMLS may amend at any time subject to the terms of Paragraph 23. Subscriber shall pay the fees according to the terms set out in the TMLS Policies.

21. **No refunds.** TMLS need not refund or pro-rate fees in the event of termination or suspension of this Agreement unless the TMLS Policies provide otherwise. Initiation fees, if any, are not refundable.

22. **Taxes.** All fees for the TMLS Service are exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, Subscriber shall pay all such taxes and levies other than any tax or levy on the net income of TMLS.

23. **Fee changes.** TMLS may amend the Schedule of Fees at any time at its sole discretion. TMLS shall provide written notice to Subscriber at least thirty days in advance of the effective date of any fee increase. If Subscriber objects to the increase, Subscriber may terminate this Agreement by written notice to TMLS at any time before the effective date of the increase.

24. **Fines.** TMLS may collect fines from Subscriber for violation of the TMLS Policies. Payment terms for fines are set out in the TMLS Policies. TMLS may amend its schedule of fines and terms for collecting them at its sole discretion at any time.

TERM AND TERMINATION

25. **Term.** This Agreement shall commence upon the Effective Date set forth below and shall continue thereafter on a month-to-month basis until terminated.

26. **Termination for breach.** TMLS may terminate this Agreement with seven days' notice if Subscriber fails to comply with the terms of this Agreement or of the TMLS Policies. In the case of minor infractions (e.g., an advertisement by Subscriber that inadvertently contains wording inconsistent with this policy), a warning or fine will be administered. This agreement automatically terminates if Subscriber becomes a REALTOR® or becomes a Brokerage Subscriber of MLS by affiliating with a TMLS broker or appraiser participant.

27. **Termination for failure to pay.** In the event Subscriber fails to pay any fees required under this Agreement, TMLS may terminate service without being subject to arbitration, and TMLS may bring any claims for fees to small claims court. In its sole discretion, TMLS may suspend its performance under this Agreement rather than terminating it, in the event that Subscriber fails to pay fees required under this Agreement.

28. **Termination without fault.** Either party may terminate this Agreement upon 30 days' written notice to the other party.

29. **Events upon termination.** Promptly upon any termination of this Agreement, (a) TMLS shall deactivate Subscriber's user ID and password, and Subscriber shall have no further access to the TMLS Service; and (b) all licenses granted hereunder shall immediately terminate.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION

30. **DISCLAIMER OF WARRANTIES.** TMLS PROVIDES THE TMLS SERVICE AND ALL COMPONENTS OF IT ON AN "AS IS," "AS AVAILABLE" BASIS. USE OF THE TMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE TMLS SERVICE ARE AT THE SOLE RISK OF SUBSCRIBER. THE TMLS AFFILIATES DO NOT WARRANT THAT THE TMLS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND THE TMLS AFFILIATES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY INFORMATION AVAILABLE THROUGH THE TMLS SERVICE. THE TMLS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE TMLS SERVICE AND THE INFORMATION AVAILABLE THROUGH THE TMLS SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The TMLS Service may contain hyperlinks to web sites operated by parties other than TMLS; TMLS does not control such web sites, is not responsible for their contents, does not endorse the sites or contents, and may have no relationship with the sites' operators.

31. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE TMLS AFFILIATES SHALL BE LIABLE TO SUBSCRIBER OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE TMLS SERVICE, INCLUDING RELIANCE BY SUBSCRIBER ON ANY INFORMATION OBTAINED THROUGH USE OF THE TMLS SERVICE; MISTAKES, OMISSIONS, DELETIONS OR DELAYS IN TRANSMISSION OF SUCH INFORMATION; INTERRUPTIONS IN TELECOMMUNICATIONS CONNECTIONS TO THE TMLS SERVICE; AND VIRUSES OR FAILURES OF PERFORMANCE; WHETHER CAUSED IN WHOLE OR PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OF, DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO THE TMLS SERVICE AND RELATED INFORMATION, RECORDS AND PROGRAMS.

32. **MAXIMUM AGGREGATE LIABILITY.** IN NO EVENT SHALL TMLS BE LIABLE TO SUBSCRIBER FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES SUBSCRIBER HAS PAID TMLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100.

33. **Indemnification.** Subscriber shall defend, indemnify and hold the TMLS Affiliates and Other Subscribers harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against the TMLS Affiliates or Other Subscribers arising from any breach of this agreement by Subscriber, including (a) putting inaccurate information into the TMLS Service; (b) making unauthorized use of Subscriber's password; (c) infringing any proprietary or contract right of any third party; (d) breaching any warranty under this Agreement; and (e) violating this or any other Agreement or any law.

34. **Acknowledgment.** Subscriber acknowledges that TMLS has set its fees and other charges in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

DISPUTES AND REMEDIES

35. **Injunctive relief.** Subscriber acknowledges and agrees that the TMLS Service is a confidential and proprietary product of TMLS and that in the event there is unauthorized access to them by Subscriber, no remedy at law will be adequate. Subscriber therefore agrees that in the event Subscriber causes or facilitates such unauthorized access to the TMLS Service, TMLS may obtain injunctive relief or other equitable remedies against Subscriber in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

36. **Dispute resolution.** In the event TMLS claims that Subscriber has violated the TMLS Policies, TMLS may, at its option, resolve such a claim according to the disciplinary procedures set out in the TMLS Policies. Subscriber agrees to submit all other disputes or claims under this Agreement to the jurisdiction and venue of the state and federal courts sitting in Wake County, North Carolina.

37. **Liquidated damages.** Subscriber acknowledges that damages suffered by TMLS from access to the TMLS Service by an unauthorized third party as a result of disclosure of Subscriber's password would be speculative and difficult to quantify. Accordingly, as a material inducement to TMLS to enter into this Agreement with Subscriber, Subscriber agrees that in the event that any disclosure of Subscriber's password results in access to the TMLS Service by an unauthorized third party, regardless of whether such disclosure is intentional, negligent or inadvertent, Subscriber shall be liable to TMLS for liquidated damages in the amount of \$15,000 (or the amount established in the TMLS Policies, whichever is greater) and termination of this Agreement.

38. **Legal fees.** In the event of legal action or proceeding between TMLS and Subscriber, on account of or in respect to this Agreement, where TMLS is the prevailing party, TMLS shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred in such action or proceeding

MISCELLANEOUS

40. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, TMLS and Subscriber, and this Agreement shall not create or be construed to create any rights in any home owner, home seller, home purchaser, board or association, or other third party.

41. **Interpretation and amendment.** Subscriber expressly consents to the execution of amendments by electronic means (such as web site "click through" agreements). TMLS may amend this agreement by

providing 30 days' advance notice of the amendment to Subscriber. If Subscriber continues to use the TMLS Service after the expiration of the 30-day notice period, Subscriber will be deemed to have agreed to the terms as amended. Except as provided in this paragraph, this Agreement may not be amended except by written instrument executed by both parties.

42. **Assignment.** Neither this Agreement nor any obligations or duties hereunder may be assigned or delegated by Subscriber. Any purported assignment or delegation in contravention of this section is null and void.

43. **Integration and severability.** This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject hereof. Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. The foregoing notwithstanding, if any provision of Sections 30 through 34 is

declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Subscriber's access to the TMLS Service shall immediately terminate.

44. **Governing law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina applicable to contacts made and performed in North Carolina, without regard to its conflicts of law and choice of law provisions.

45. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and delivered via (a) U.S. Mail, postage paid and return receipt requested; (b) express mailing service with confirmation of receipt; (c) facsimile transmission, provided sender obtains confirmation of transmission; or (d) electronic mail, provided sender requests a return receipt. All notices are effective on the date of receipt or three days after transmission, whichever is earlier.

Having read this Agreement, the parties express their will to be bound by its terms by setting their signatures below.

Subscriber

Signature

Print name

Firm/office name

I am subscribing to TMLS as a:

LICENSED HOME INSPECTOR SUBSCRIBER

Home Inspector License #

Home Street Address

City State Zip

Preferred Contact #

E-mail Address

Web URL:

Please fax the completed form to (919) 654-5402 or email to Subscribership@TriangleMLS.com. Any open invoices must be paid prior to being activated or transferred.

Triangle MLS, Inc.

Signature

Print name

Effective Date

FOR TMLS STAFF USE ONLY	
Member #	_____
Office #	_____
License #	_____
2nd License #	_____
NCHILB Verified	_____
TRAINING date	_____

Rapattoni Input Date	_____
Username/ provided	_____