

Triangle MLS, Inc. Participant Agreement

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

DEFINITIONS AND USAGE.

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

Other Participants and Subscribers: All participants and subscribers of TMLS not party to this Agreement.

Participant Contribution: All data that the Subscribers submit, contribute, or input in the TMLS System, including text, binary, and photographic image data, in any form now known or hereafter discovered.

Saved Information: Information that Subscribers store in the TMLS System for their own later use that is not intended by them to be available to Other Participants and Subscribers, including client prospect and contact information.

Subscribers: Participant's employees, contractors, salespeople, and assistants (whether licensed or unlicensed as real estate brokers or appraisers).

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

TMLS Database: All data available to Participant on the TMLS System, including the Participant Contribution and all other text, binary, and photographic image data, in any form now known or hereafter discovered.

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 Participant under this Agreement and similar services TMLS provides to third parties under similar agreements, including any access or license to the TMLS Software, the TMLS Database, and the TMLS System.

TMLS Software: TMLS's proprietary web browser interface(s) to the TMLS System.

TMLS System: The aggregate of all hardware and telecommunications systems that TMLS maintains, or that TMLS contractors maintain on its behalf, in order to make access to the TMLS Database available to Participant.

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 fully interchangeable.

(c) Wherever the term "law" is used, it means all statutes, regulations, and case 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. Subject to the terms and conditions of this Agreement and the TMLS Policies, TMLS shall provide one unique user ID and password to each of the Subscribers that is authorized to obtain access to the TMLS service by virtue of this Agreement or another license agreement; and

Participant shall have all rights and obligations of a participant in TMLS as set forth in the TMLS Policies. The user ID and password will provide Participant access to all data and functions in the TMLS Service to which Participant is entitled under the TMLS Policies. TMLS makes no warranties, however, that the TMLS Service will be available at all times.

PARTICIPANT 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 TMLS Database or the Participant Contribution; 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 Participant 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.** Participant must at all times during the term of this Agreement satisfy the prerequisites for participation in the TMLS Service. The prerequisites are set out in the TMLS Policies; at present, they include a requirement that Participant either (a) hold a real estate broker's license, be actively engaged in real estate brokerage, and offer and receive offers of compensation from other brokerage firms; or (b) be licensed or certified by an appropriate regulatory agency to engage in the appraisal of real property. Participant must maintain active membership in a REALTOR® association at all times during the term of this Agreement. Subscribers may enter and retrieve active listing information on the TMLS Service only if Participant offers compensation to and accepts compensation from other principal brokers.

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

8. **Disclosure to third parties.** TMLS reserves the right to distribute to third parties certain information about Participant, including Participant's name and business address, phone number and email address. TMLS reserves the right to distribute to third parties aggregated information about Participant's and Other Participants' and Subscribers' use of the TMLS Service, but not about Participant's use specifically.

9. **Disclosure to government.** Participant acknowledges that TMLS may provide government agencies access to the TMLS Service at any time in TMLS's sole discretion.

10. **Priority of agreements.** Participant must enter into this Agreement before any other Subscriber may obtain access to the TMLS Service. Subscriptions of other Subscribers are dependent on this Agreement; any termination or suspension of this Agreement will result in termination or suspension of dependent Subscriber agreements.

11. **If Participant is an appraiser or appraisal firm,** Participant acknowledges that certain information in the TMLS Database, including information about listings currently for sale, may be withheld from Participant pursuant to the TMLS Policies.

12. **IDX, VOW, and firm internal data access subject to separate agreement.** Participant acknowledges that access to TMLS's IDX database and data feeds for VOWs and Participant's firm internal uses can occur only subject to a separate written agreement between TMLS and Participant.

PARTICIPANT'S OBLIGATIONS.

13. **Use limited.** Participant shall use the TMLS Service solely for the purpose of selling, listing, leasing, and appraising real estate. Except as expressly provided in this Agreement and the TMLS Policies, Participant shall not copy, create derivative works of, distribute, perform, or display the TMLS Service or any part of it.

14. **Confidentiality.** Participant shall maintain the confidentiality of its user ID and password; Participant shall not provide its ID and password to any other Subscriber or to any third party. Participant shall ensure that the Subscribers maintain the confidentiality of their user IDs and passwords and that no one but authorized Subscribers obtains access to the TMLS Service or any part of it. To maintain the confidentiality of all user IDs, passwords, the TMLS Database, and the TMLS System, Participant 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. Participant 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, Participant first gives reasonable notice to TMLS to permit TMLS to seek a protective order.

15. **Equipment.** Participant shall acquire and maintain all personal computers, modems, telecommunications connections, and computer software, other than the TMLS Software, necessary for Participant's use of the TMLS Service.

16. **Participant Contribution.** When making a Participant Contribution to the TMLS Service, Participant 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 listing types; and (d) procedures for submission. Participant warrants that the Participant 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 Participant Contribution.

17. **Subscriber agreements.** Participant shall ensure that each real estate and appraisal licensee affiliated with Participant, and each non-licensee affiliated with Participant who will have access to the TMLS System or TMLS Database, enters into a Subscriber agreement with TMLS. Participant is liable for all fees due under each Subscriber agreement.

18. **Subscriber supervision.** Participant shall ensure that all Subscribers comply at all times with the TMLS Policies and with applicable laws. Participant is liable for any Subscriber's breach of any agreement between the Subscriber and TMLS relating to the TMLS Service or violation of any of the TMLS Policies as if Participant himself had committed it.

19. **List of Subscribers.** Participant shall ensure TMLS has a current list of all of Subscribers; Participant shall inform TMLS in writing of any change in the Subscribers within 24 hours of the change.

20. **Accurate information.** Participant warrants that the Subscribers have used and will use reasonable care to ascertain the accuracy of the Participant Contribution and its compliance with all laws. Participant shall ensure that any changes to the Participant Contribution are made on the TMLS System within such time as TMLS shall provide in the TMLS Policies. Pursuant to the TMLS Policies, Participant shall provide to TMLS all documentation TMLS requests of Participant to ascertain Participant's compliance with this Agreement.

INTELLECTUAL PROPERTY.

21. **Election regarding copyrights in Participant Contributions.** Participant must elect from the following options. If no election is

indicated, or if both options are checked, then Participant is not allowed to participate in TMLS.

OPTION I

(a) **Assignment from Participant.** Participant hereby assigns to TMLS all right, title and interest, including all rights under U.S. and international copyright law, in the Participant Contribution; Participant warrants that it has the authority to make this assignment. Participant acknowledges that once it has made the election agreeing to this section, all copyrights in all portions of the Participant Contribution, whether submitted prior to or after executing this Agreement, shall irrevocably vest in TMLS.

(b) **TMLS Obligations.** TMLS hereby grants to Participant a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution and those portions of the TMLS Database relating to Participant's listings. TMLS shall secure the rights of Participant hereunder by obtaining assignments and licenses from Subscribers and others as necessary. TMLS shall make quarterly registrations of the copyrights in the TMLS Database, including the Participant Contribution; TMLS shall employ reasonable efforts to detect and hinder third parties using the Participant Contribution without Participant's permission.

OPTION II

(a) **License from Participant.** Participant hereby grants to TMLS a non-exclusive, perpetual, world-wide, transferable, royalty-free, license to reproduce, prepare derivative works of, distribute, display, perform and license (including sublicenses through multiple tiers) the Participant Contribution. Participant warrants that it has the authority to grant this license.

(b) **TMLS has no obligations to protect.** Participant acknowledges that: (i) TMLS makes no grant of license or assignment to Participant of any rights in the TMLS Database except as set forth in paragraph 22; (ii) TMLS will make no effort to register the copyrights in the Participant Contribution, and Participant will be responsible for all costs and efforts associated with registration; (iii) timely copyright registration is a prerequisite to suing a copyright infringer, and is necessary in order to obtain certain remedies available under the U.S. Copyright Act; (iv) **TMLS will employ no efforts whatsoever to detect or hinder third parties using the Participant Contribution without Participant's permission;** (v) TMLS will make no effort to secure for Participant the right to use copyright works created by Subscribers or third parties.

22. **Other licenses.** TMLS hereby grants Participant a personal, non-exclusive, non-transferable, and royalty-free license during the term of this Agreement to use the TMLS Software and the TMLS Database (excluding the Participant Contribution) (collectively, the "Licensed Materials"), only to the extent expressly permitted by this Agreement and the TMLS Policies and only to deliver real estate brokerage or appraisal services to Participant's bona fide customers. All uses of the Licensed Materials not expressly authorized in this Agreement and the TMLS Policies are prohibited. Title to the Licensed Materials remains at all times in TMLS and shall not pass to Participant.

23. **Further Participant warranty.** Participant warrants that (a) the Participant Contribution does not infringe on the copyright or other intellectual property rights of any third party; (b) Participant has the written consent of any party necessary to provide the Participant

Contribution to TMLS; and (c) there is no claim, litigation or proceeding pending or threatened with respect to the Participant Contribution.

24. **Limitations on use by TMLS.** Except as otherwise expressly provided in this Agreement, TMLS agrees during the term of this Agreement not to license or distribute the Participant Contribution to any third party that is not a real estate brokerage or appraisal subscriber to the TMLS Service if Participant has indicated in writing its desire to withhold the Participant Contribution from such third party after TMLS has provided notice of its intention to provide the Participant Contribution to the third party.

FEES AND PAYMENT TERMS.

25. **Applicable fees.** Participant 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 29. TMLS may bill Subscribers for the TMLS Service, but Participant remains liable for fees unpaid by Subscribers.

26. **Payment terms.** Participant shall pay the fees according to the terms set out in the TMLS Policies.

27. **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.

28. **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, Participant shall pay all such taxes and levies other than any tax or levy on the net income of TMLS.

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

30. **Fines.** TMLS may collect fines from Participant for violation of the TMLS Policies by Participant and Subscribers. 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.

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

32. **Termination for breach.** Either party may terminate this Agreement in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement. Any such termination shall become effective upon the expiration of three days after written notice thereof if the breach or nonperformance has not then been remedied.

33. **Termination for breach of TMLS Policies.** Paragraph 32 notwithstanding, TMLS may terminate this Agreement if Participant fails to comply with the TMLS Policies; if Participant violates or is alleged to have violated the TMLS Policies, this Agreement shall not be terminated in accordance with the terms of this section until any hearing or appeal rights of Participant have expired as provided in the TMLS Policies. If in TMLS's judgment, however, a violation or alleged violation of the TMLS Policies is resulting in a continuing harm to TMLS or Other Participants or Subscribers, TMLS may suspend Participant's access to the TMLS Database during the pendency of any hearing or appeal.

34. **Termination for failure to pay.** In the event Participant 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 Participant fails to pay fees required under this Agreement.

35. **Termination without breach.** Either party may terminate this Agreement with or without cause, upon thirty days' written notice to the other.

36. **Events upon termination.** Promptly upon any termination or expiration of this Agreement, (a) TMLS shall deactivate Participant's user ID and password, and Participant shall have no further access to the TMLS Service; (b) Participant shall purge all copies of the TMLS Software and the TMLS Database (except the Participant Contribution) from Participant's personal computers; and (c) all licenses granted hereunder, except the license to the Participant Contribution in Paragraph 21(b), if any, shall immediately terminate.

37. **Affect on Subscribers.** Upon termination of this Agreement the license and access agreements of all other Subscribers shall also immediately terminate.

DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION.

38. **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 PARTICIPANT. 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.

39. **LIMITATIONS AND EXCLUSIONS OF LIABILITY.** NONE OF THE TMLS AFFILIATES SHALL BE LIABLE TO PARTICIPANT 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 ANY 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.

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

41. **Indemnification.** Participant shall defend, indemnify and hold the TMLS Affiliates and Other Participants and 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 Participants and Subscribers arising from any acts of Subscribers, including (a) putting inaccurate information into the TMLS Service; (b) making unauthorized use of Subscriber's password; (c) making unauthorized use of the TMLS Database; (d) infringing any proprietary or contract right of any third party; (e) breaching any warranty under this Agreement; and (f) violating this or any other Agreement or any law.

42. **Acknowledgment.** Participant 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.

43. **Injunctive relief.** Participant acknowledges and agrees that the TMLS Software and TMLS Database are confidential and proprietary products of TMLS and that in the event there is an unauthorized disclosure of them by Participant, no remedy at law will be adequate. Participant therefore agrees that in the event of such unauthorized disclosure of TMLS Software or TMLS Database, TMLS may obtain injunctive relief or other equitable remedies against Participant in addition to all available remedies at law, without any showing of actual damages or posting any bond or security of any kind.

44. **Dispute resolution.** In the event TMLS claims that Participant 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. Participant 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.

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

46. **Legal fees.** In the event of legal action or proceeding between TMLS and Participant, or TMLS and any 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. If TMLS is the prevailing party in an action against a Subscriber, Participant shall be obligated to pay these costs on the Subscriber's behalf.

MISCELLANEOUS.

47. **No third-party beneficiaries.** This Agreement is entered into solely between, and may be enforced only by TMLS and Participant, 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.

48. **Interpretation and amendment.** Participant 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 Participant. If Participant or any Subscriber continues to use the TMLS Service or TMLS Database after the expiration of the 30-day notice period, Participant 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.

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

50. **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 Paragraphs 38 through 42 is declared invalid or unenforceable by any court of competent jurisdiction, this Agreement and Participant's access to the TMLS Service shall immediately terminate.

51. **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.

52. **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.

Triangle MLS, Inc.

Participant

Signature

Participant (firm name)

Print name

Signature of principal, officer, owner or broker-in-charge

Effective Date

Print name of principal, officer, owner or broker-in-charge

Firm is participating in TMLS as a:

REAL ESTATE BROKER
Broker License # _____
Firm License # _____

REAL ESTATE APPRAISER
License # _____

REAL ESTATE AUCTIONEER
License # _____

FOR TMLS STAFF USE ONLY

Member # _____

Office # _____

License # _____

2nd License # _____

NCREC/NCAB Verified _____